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First Session—Twenty-fifth Parliament

1962

THE SENATE OF CANADA

PROCEEDINGS OF THE STANDING COMMITTEE ON

BANKING AND COMMERCE

To whom was referred the Bill S-2, intituled: "An Act to amend the Bankruptcy Act".

The Honourable SALTER A. HAYDEN, Chairman

No. 1

WEDNESDAY, NOVEMBER 14, 1962

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WITNESS:

Mr. T. D. MacDonald, Assistant Deputy Minister of Justice.

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1962

THE STANDING COMMITTEE ON BANKING AND COMMERCE

The Honourable Salter Adrian Hayden, *Chairman*

The Honourable Senators

Aseltine	Gouin	O'Leary (<i>Carleton</i>)
Baird	Hayden	Paterson
Beaubien (<i>Bedford</i>)	Higgins	Pearson
Beaubien (<i>Provencher</i>)	Horner	Pouliot
Bouffard	Howard	Power
*Brooks	Hugessen	Pratt
Burchill	Irvine	Reid
Campbell	Isnor	Robertson
Choquette	Kinley	Roebuck
Connolly (<i>Ottawa West</i>)	Lambert	Smith (<i>Kamloops</i>)
Crerar	Leonard	Taylor (<i>Norfolk</i>)
Croll	*Macdonald (<i>Brantford</i>)	Thorvaldson
Davies	McCutcheon	Turgeon
Dessureault	McKeen	Vaillancourt
Drouin	McLean	Vien
Emerson	Molsen	Willis
Farris	Monette	Woodrow—50.
Gershaw		

(Quorum 9)

*Ex officio member.



ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Thursday, November 8th, 1962:

Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Higgins, seconded by the Honourable Senator Hnatyshyn, for second reading of the Bill S-2, intituled: "An Act to amend the the Bankruptcy Act".

After debate, and—

The question being put on the motion, it was—
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Brooks, P.C., moved, seconded by the Honourable Senator Choquette, that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—
Resolved in the affirmative.

J. F. MacNEILL,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

WEDNESDAY, November 14, 1962.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 11.00 a.m.

Present: The Honourable Senators:—Hayden, *Chairman*; Aseltine, Croll, Davies, Drouin, Gershaw, Gouin, Irvine, Isnor, Kinley, Lambert, McKeen, Reid, Taylor (*Norfolk*), Thorvaldson, Turgeon, Vaillancourt and Willis.

In attendance: Mr. E. R. Hopkins, Law Clerk and Parliamentary Counsel, the Official Reporters of the Senate and Mr. John Larose, Superintendent of Bankruptcy, Department of Justice.

Bill S-2, intituled “An Act to amend the Bankruptcy Act”, was considered.

On Motion of the Honourable Senator Aseltine it was *Resolved* to report recommending that authority be granted for the printing of 1000 copies in English and 300 copies in French of the Committee’s proceedings on the said Bill.

At 1.00 p.m. further consideration of the said Bill was adjourned until Wednesday, November 21st, 1962, at 10.00 a.m.

Attest.

James D. MacDonald,
Clerk of the Committee.

THE SENATE
STANDING COMMITTEE ON BANKING AND COMMERCE
EVIDENCE

OTTAWA, Wednesday, November 14, 1962.

The Standing Committee on Banking and Commerce, to which was referred Bill S-2, to amend the Bankruptcy Act, met this day at 10.30 a.m.

Senator Salter A. Hayden (*Chairman*), in the Chair.

On a motion duly moved and seconded it was agreed that a verbatim report be made of the committee's proceedings on the bill.

On a motion duly moved and seconded it was agreed that 1,000 copies in English and 300 copies in French of the committee's proceedings on the bill be printed.

The CHAIRMAN: Honourable senators, we now have for consideration Bill S-2, an act to amend the Bankruptcy Act, and Mr. T. D. MacDonald, the Assistant Deputy Minister of Justice is here. I should tell you that in addition to Mr. MacDonald, the Assistant Deputy Minister of Justice, we also have present the Superintendent of Bankruptcy, Mr. John S. Larose.

I should add, too, that there have been a number of organizations who have written indicating that they wanted to present their views to this committee. Most of them found it difficult to be here this week, but they undertook to be here on November 21st, next Wednesday. So, subject to what you say, what we have advised them is that we will hear the departmental people today—that is, the Superintendent of Bankruptcy and, if he has anything to add, Mr. MacDonald—and then we shall adjourn until next Wednesday, at which time we shall hear the public. There are some firms in Montreal, there is the Board of Trade in Toronto, and, possibly, the Registrar in Bankruptcy in Toronto, all of whom want to make submissions. It is our practice to hear from them, and there is no reason why we should depart from it in the case of this bill.

Senator ISNOR: Will these proceedings be printed and distributed by that time, Mr. Chairman?

The CHAIRMAN: I would hope so. Since there has been such a demand for copies of this bill, while you have a copy before you perhaps you will take it with you when you leave and remember to bring it back when we meet next week. Otherwise we may be short of some copies.

On this basis, perhaps Mr. Larose is going to carry the ball.

Mr. T. D. MacDonald, Assistant Deputy Minister, Department of Justice: Perhaps between us we can deal with this matter, Mr. Chairman.

The CHAIRMAN: You make the election who is going to open then.

Mr. MACDONALD: Mr. Chairman and honourable senators, I had not prepared any opening statement because of the manner in which the bill has already been explained in the Senate. Mr. Larose and I have come here this morning ready to answer any questions or to make any explanations requested on the clauses of the bill. However, Mr. Chairman, if you think it would be of any assistance for me to make a brief opening statement as to the purpose of the bill, I should be glad to do so.

The CHAIRMAN: I think that would be satisfactory. In doing that, I think this might be a principle to be borne in mind. You have provisions in the present Bankruptcy Act dealing with small estates in a summary way. Now you have this new part being added called the orderly payment of debts. I am wondering whether one is truly a substitution for the other. Do not they run in parallel lines?

Mr. MACDONALD: I think that is the more correct view, that they run in parallel lines or somewhat parallel lines.

The CHAIRMAN: This bill provides if a province adopts the orderly payments provision that the summary provisions are repealed.

Mr. MACDONALD: I didn't mean that. May I go back to the beginning and review the origin of the bill.

The CHAIRMAN: All right.

Mr. MACDONALD: Senators will remember, that the present Bankruptcy Act passed through the Senate and the House of Commons in 1949. Indeed, some Senators who are present today, were also in the Banking and Commerce Committee at that time. Since that time there have been received by the Superintendent of Bankruptcy and in the Department of Justice a large number, a very large number, of suggestions for changes in the Act. I think it can be said that the general view among the people suggesting changes is that basically it is a pretty good Act, but that there are many details in which improvements could be made.

Now these suggestions or proposals for amendments have reached a very large volume, and for some time have been under study in the department on the part of the Superintendent of Bankruptcy and others, looking toward a fairly comprehensive revision of the Bankruptcy Act. In the meantime, however, there were two areas in which proposals for changes were put forward on the basis that they were somewhat more pressing than the ordinary amendments that were suggested, and that they should be dealt with at the present time. These two aspects which are dealt with in the present bill are separate but related, as you, Mr. Chairman, have suggested. In the first place certain irregularities and abuses under the Act were disclosed as the result of investigations, in some parts of the country, and it was suggested, I think with justification, that the abuses were contributed to by some of the provisions that found their place for the first time in the 1949 Act. Those were the provisions relating to summary administration of small estates. Now those provisions occur in section 26, subsection (6) of the Act, and in sections 114 to 116, and I will describe them very briefly.

Section 26, subsection (6), provides that where the bankrupt is not a corporation and in the opinion of the official receiver—he is the person who receives the petition in bankruptcy, and I am reading from section 26, subsection (6) of the Act: "Where the bankrupt is not a corporation and in the opinion of the official receiver the realizable assets of the bankrupt, after deducting the claims of secured creditors, will not exceed five hundred dollars, the provisions of the Act relating to summary administration of estates shall apply."

In other words when you come upon an estate of this kind where the official receiver who received the petition is of the opinion that the realizable assets after deducting the claims of secured creditors will not exceed \$500, he turns and everybody turns to the special provisions in sections 114, 115 and 116 as governing those estates. And what those sections do, and the meat of them is in section 114, is to relieve those small estates from some of the ordinary requirements and safeguards of the Act that would otherwise apply. Perhaps I might refer in particular to two of them. Might I direct your attention to section 114, paragraph (g), which says:

There shall be no inspectors but the trustee in the absence of directions from the creditors may do all things that may ordinarily be done by the trustee with the permission of inspectors;

So, the gist of that is that there are no inspectors as there otherwise would be.

The CHAIRMAN: What about section (b)?

Senator REID: You are removing the entire section 114?

Mr. MACDONALD: Yes.

The CHAIRMAN: That should be qualified. All that is indicated is that when a province indicates it is prepared to accept that bill it is proclaimed in relation to that province. What does this section say, this section 198? It says:

This part shall come into force in any province only upon the issue, at the request of the Lieutenant-Governor in council of that province, of a proclamation by the Governor in Council declaring it to be in force in that province.

Mr. MACDONALD: I think the answer to that, Senator Hayden, is that it is Part X that comes into force in that way. The clauses of the bill which effect the repeal of the special provisions relating to summary administration of small estates are not part of part 10 and are not subject to proclamation but come into effect upon the passing of the bill.

The CHAIRMAN: Of course if you take that view the situation is that unless a province requires that this Part X come into effect you have no provision in your bankruptcy in your province in relation to small estates.

Mr. MACDONALD: You have no special provisions and they fall to be administered under the Bankruptcy Act the same as other estates.

The CHAIRMAN: I am told, and we may get evidence next week, that way over 1,800 proceeded in the province of Ontario last year and maybe 50 per cent would come in the category of small estates.

Mr. MACDONALD: The Superintendent will be prepared to give you figures of the number of bankruptcies, and breakdowns for any years which you wish. I have a very summary table before me which doesn't break down the statistics according to provinces, but it shows that in 1961, last year, there were a total of 3,511 bankruptcies in Canada, of which 1,638 were administered in the ordinary way under the Act, and 1,873 were small bankruptcies to which the summary administration provisions applied.

Senator DAVIES: May I ask a question? Are the fees in the case of the small bankruptcies the same as in large ones? It was complained that in some cases the fees ate up all that could be obtained from the assets.

Mr. MACDONALD: There is no special provision about fees with respect to these small estates subject to summary administration. The fees fall to be determined in the same way as with other estates.

Perhaps I might make a comment on Senator Davies' question, which probably points up one of the complaints that arise in connection with the summary administration of estates. A complaint commonly received by the superintendent and the department is that a debtor will go to a trustee—and it has been suggested at times he may even be solicited by a trustee—and state: "I would like to rid myself of the debts that are pressing on me", and in certain cases the trustee will say to the debtor: "Well, if you will make a deposit of assets with me sufficient to cover my disbursements and my fees I will undertake the administration of your estate". He will say that he requires \$150, \$200, \$250 or \$300 as the case may be, and the debtor then succeeds in raising the sum mentioned and deposits it with the trustee. There

are then no inspectors. The trustee is not required to file a bond—and I want to touch on that in a moment—and what happens is that the trustee makes no real effort to get in any of the realizable assets of the debtor for the benefit of the creditors, or to realize upon the touchable portion of his salary, but simply puts the case through the court using the money for his fees and disbursements.

Senator KINLEY: That is one of the abuses?

Mr. MACDONALD: Yes.

The CHAIRMAN: There is this feature. When the trustee in those circumstances is sending out the notice he has also got an appointment from the court to hear the application for the discharge of this individual, and he includes a notice of that with all the material.

Senator DROUIN: It is a package deal.

The CHAIRMAN: Yes.

Senator DROUIN: And it works.

Mr. MACDONALD: Another characteristic of section 114 to which I wish to refer is the provision in paragraph (b) that the trustee is not required in an estate subject to this section, to deposit the security that he ordinarily has to deposit under the act for the proper administration of an estate.

In any event, Mr. Chairman, representations were received to the effect that if a revision of the act was not immediately contemplated then at least steps should be taken towards the elimination of the abuses that have been turning up, and it was suggested that a considerable step in that direction would be the repeal of the summary administration provisions, mainly, subsection (6) of section 26, and sections 114, 115 and 116. That suggestion came from various parties interested in the administration of the Bankruptcy Act, including the Canadian Bar Association and the Chief Justice of the court charged with bankruptcy jurisdiction in one of the provinces.

Senator DAVIES: Mr. Chairman, may I ask another question? Is there any law that makes it mandatory for a man who realizes that his liabilities are double his assets to file a petition in bankruptcy, or not?

Mr. MACDONALD: I would say no, Senator Davies.

The CHAIRMAN: He may make a voluntary assignment.

Mr. MACDONALD: It was considered, at the same time, that the elimination of these provisions would not impose any unreasonable difficulties upon small debtors, and that, pending the revision, and in the interests of preventing the abuses I have mentioned, these provisions be repealed. That is the first part of the bill.

The second part of the bill came up in an unrelated way. There had been in effect in the province of Manitoba over quite a number of years—my recollection is that it goes back to about 1932—legislation called The Orderly Payment of Debts Act, and about 1959 that act was copied by the province of Alberta although never proclaimed. That legislation provided a comparatively simple and inexpensive procedure whereby a debtor who felt that he could not meet his obligations as they came due could go to the clerk of the district court or the county court and ask him to issue a consolidation order.

In effect, what happened was that the debtor disclosed to the clerk of the court the names of his creditors, the amounts of the debts, his circumstances as to income, obligations, dependents and so forth, and the clerk then issued a consolidation order in which he entered the names of the creditors, the amounts due to each of them, and an amount he determined the debtor was able to pay, and should pay, into court periodically to be distributed among his creditors until the debts were completely discharged. It was not a scheme for

taking the assets of the debtor and placing them in the hands of a trustee and dividing them up one and for all among the creditors. It was a scheme rather, whereby the debtor was required to make the maximum payments that his circumstances permitted and continue to make them until the debts were entirely discharged.

There are many procedural provisions which I will pass over for the moment. No doubt they will come up in discussion of the particular clauses and sections.

May I say briefly that that was not done without the creditors having an opportunity to be heard, because before the consolidation order was finally settled, the clerk of the court gave notice to each of the creditors affected as to the amount which the debtor said was due the creditor, and the amount the clerk of the court proposed to order the debtor to pay, and each of the creditors had an opportunity to come in and object.

Also, there were certain exceptions from the operation of the act—debts over a certain amount, without the consent of the creditor concerned; certain tax debts; and other debts which at the present time are reflected, as we shall see, in section 174 of the bill.

Senator DROUIN: In these cases, in determining the amount each debtor should pay into court in an orderly manner, would they consider the seizable portion of his salary, if he is in receipt of a salary? Would that be a determining factor in deciding what the debtor shall pay into court for the benefit of his creditors?

Mr. MACDONALD: That is a factor which doubtless would be taken into consideration by the clerk; but his attention was not specifically directed to it, either in the Alberta act or the Manitoba act, nor is it in this bill.

Senator WILLIS: I am not clear if the province of Ontario, for instance, did not proclaim this act.

The CHAIRMAN: Did not request it.

Senator WILLIS: Under section 114 of the 1949 one?

Mr. MACDONALD: Yes.

Senator WILLIS: That would discriminate against the poor Ontario bankrupt, as I do not think the courts of Ontario have a lien on what they have now.

Mr. MACDONALD: If Part X were not proclaimed in Ontario it would only discriminate against the poor Ontario bankrupt in this way....

Senator WILLIS: He would not have the protection he has under section 114 now.

Mr. MACDONALD: It is necessary, in considering what protection, if any, he has lost, to look at these provisions carefully. It would mean, for example, that the creditors could have inspectors.

The CHAIRMAN: What it would mean, Mr. MacDonald, I think is that in the same estate there would not be a procedure that for practical purposes would be available to that small estate and therefore he would have to be, in the language of that state, nobody, just a poor person, hopelessly bound up in his debts and with no way of getting any relief. How does he get any money? It takes money to get into bankruptcy.

Senator DROUIN: You have to be solvent, almost.

Senator KINLEY: As regards property and civil rights, it is ultra vires the acts of Alberta and Manitoba. The salvage in the act is ultra vires. This act is an enabling act, so that the province can come in if it wishes.

It is taking away from those provinces something they have at present.

Senator WILLIS: By repealing section 114.

Senator DROUIN: Could this bill be arranged so that section 114 would apply in Ontario, if Ontario does not request?

Senator WILLIS: Or any other province.

Senator DROUIN: Or any other province.

The CHAIRMAN: We would have to amend the bill, but it could be arranged that the existing sections only would be repealed when part 10 is applicable.

Senator REID: Is this bill giving a completely new addition to the present Bankruptcy Act?

Mr. MACDONALD: No, it is merely a repeal of three sections and part of another one and an addition of a Part to the present act. The present act will stand except for that.

Senator KINLEY: In regard to section 174(c), they make provision for the provinces of Alberta and Manitoba, as regards the classes of debts to which it does not apply unless the creditor consents. Among those it says:

In any other province, any debt of a class designated by the regulations to be a class of debts to which this part does not apply

Does that give the province the privilege of making regulations of its own?

The CHAIRMAN: Either the province has the right to do this or it has not the right to do this. All this says is that there are certain classes of debts in the province of Alberta to which this bill, even if it is brought into force, would not apply. Then in Manitoba it also deals with that. Then it says that in any other province any debt of a class designated by the regulations—that is, by the regulations under this Part to be a class of debts to which this Part does not apply.

Senator KINLEY: Could we have different regulations in each province?

The CHAIRMAN: Yes, you could. Variety is the spice of life. This provides for it here.

Senator THORVALDSON: In regard to the remark by Senator Willis, that you would not wish to add to the duties of district court clerks in Ontario, I may say that in Manitoba, in Winnipeg, where the county court is a big court and the clerk is a busy man, though he has a number of employees, what was done there was that a special person was engaged simply as an assistant county court clerk and handled this entirely. I think he had no other duties.

The CHAIRMAN: Did he handle it in relation to the whole province?

Senator THORVALDSON: No, just in relation to Winnipeg. As you know, half the population of the province of Manitoba is in Winnipeg. Most of the business under this act was done at Winnipeg.

The CHAIRMAN: Manitoba being such a rich province, they would not require much of this kind of legislation, so it would not be used very much.

Senator THORVALDSON: Not as much as we did in 1932. As you can realize and as probably Senator Lambert realizes, this was really depression legislation. I suppose that hardly anyone takes advantage of it except wage earners, such as railway workers, people who get into financial trouble. They start by garnisheeing, then they start to lose their jobs. It was the pressure of that situation that created the necessity for this legislation in Manitoba. I imagine that in most of the other jurisdictions outside Winnipeg, probably the county court clerk handled the whole thing; but I know that in Winnipeg there was a special official with some staff of his own that might be required to do the whole job.

The CHAIRMAN: If we take Winnipeg as an illustration, what is the difference between using the clerk of the county court and using an experienced registrar in bankruptcy?

Senator THORVALDSON: Well, that is a matter of opinion. Perhaps you are right on that. I am just speaking for Manitoba, and I am not as conversant with the situation elsewhere.

Senator LAMBERT: Who is it that functions in Manitoba?

Senator THORVALDSON: Just the assistant to the clerk—an official in the offices of the county court in Winnipeg.

Mr. MACDONALD: The deputy clerk of the county court at Winnipeg.

Senator LAMBERT: It would mean a uniform application by the clerk, as the official?

The CHAIRMAN: Well, your word "uniform" bothers me, senator, because I would think the more deputy clerks you have in the various parts of each province administering would probably not make for uniform administration.

Senator LAMBERT: Possibly I came to my conclusion rather rapidly, but I thought from the remarks made in the house and here that the clerk is regarded as a better informed person with respect to the requirements.

The CHAIRMAN: He could not be better than a registrar in bankruptcy who has been doing the work for years.

Senator KINLEY: Is it all done by the same registrar?

The CHAIRMAN: Yes.

Senator DROUIN: Until his death.

Senator KINLEY: How is the debtor protected from his secured creditors? Is he protected from any action?

The CHAIRMAN: Are you referring to these provisions in the proposed Part X?

Senator KINLEY: Yes. Is he protected during the three years he has to try to pay his bills?

Mr. MACDONALD: The rights of secured creditors are not affected; that is, somebody who has a charge on a particular piece of property.

Senator KINLEY: Well, he can invoke his judgment at any time.

Mr. MACDONALD: That is correct.

Senator KINLEY: And what could he do to the salary or whatever asset this man has; could he attach it?

Mr. MACDONALD: He stands in a different position merely in respect of his right to realize on the security, and to the extent of that security, which he has for his debt.

Senator DROUIN: What about the balance that might remain?

Mr. MACDONALD: There is a somewhat technical section in regard to that, which we shall come to later. Generally speaking, it can be said that for the balance he can rank, but there are exceptions, as in the case, for example, where the provincial law says that a creditor who realizes on his security must be content with the proceeds of that security.

Senator KINLEY: Yes, if he goes it alone, but if he is under a thousand dollars he can go in by permission afterwards.

The CHAIRMAN: No, if he is under a thousand dollars he can be brought into the consolidation order.

Senator KINLEY: And supposing he is over a thousand dollars?

The CHAIRMAN: He may consent to come in whether he has a judgment or whether it is a debt; but what you are talking about is his security?

Senator KINLEY: Yes. Suppose, Mr. Chairman, a man is earning a salary of say \$10,000, and he owns a house and has been maintaining his family. That is the first consideration, is it not, that he must consider the needs of the man's family? Now, if there is anything left, do not the secured creditors come in on him before anyone gets a chance at all?

Mr. MACDONALD: On their security, yes.

Senator KINLEY: Well, can they not garnishee his salary, or does this prevent that?

Senator DROUIN: But they would not rank.

The CHAIRMAN: Mr. MacDonald, you take the case of a person who has a judgment. Now, to that extent he is secured. He is in a class, he has a judgment, and something is owing, and say it is over \$1,000. He may decide he is not going to come into these consolidation proceedings but that does not stop him from asserting his judgment. It does not deal with it, so therefore the consolidation blows up.

Senator KINLEY: What happens to the debtor if there is no money to divide; is he protected for three years? Does he lose all protection?

The CHAIRMAN: You mean make a consolidation order in relation to consolidation of debts unless it is agreed to a plan which provides for orderly payments?

Senator KINLEY: But the clerk might say you cannot touch that man's house and property. Now, if the secured creditor wants a levy on his house which is protected, is this protected if he cannot pay anything? Can he get under this act and save his home?

Senator DROUIN: No.

Senator KINLEY: So he can take the home?

Senator DROUIN: There is nothing to stop him.

Mr. MACDONALD: I would like in due course, Mr. Chairman, to come back to a question raised by Senator Willis as to the effect of repealing section 114 in the province of Ontario, or in any other province, where Part X is not proclaimed.

The CHAIRMAN: All we are trying to do now is generally to explore the effect of bringing in before us this matter of orderly payments and see if there are places where it is not puncture proof.

Mr. MACDONALD: Surely. May I address myself to the question which was raised by Senator Willis? What will happen, in any province, once section 114 is repealed, will happen independently of whether or not that province asks for the proclamation of Part X. Now, the effect of repealing section 114 will be this. The man who would previously have come under the summary of administration provisions may still come under the act as a bankrupt. Simply, the provisions of section 114 will not apply to his estate. After a petition has been made against him or he has an assignment, the provisions of section 114 will not apply to the administration of his estate. Now, the effect of that—

Senator ASELTINE: It will be to force him into bankruptcy?

Mr. MACDONALD: He can be forced into bankruptcy in the same way he could be forced into bankruptcy under the present law. The only difference is this, that when the trustee comes to administer his estate he will administer it under the ordinary provisions of the act.

Senator DROUIN: With inspectors, and everything.

Mr. MACDONALD: There will be inspectors where there were not inspectors before. There will be a bond where there was not a bond before, and various other safeguards. But the additional cost of those safeguards may not be very great; the cost of a bond is not very great. The cost of employing inspectors

need not be very great; and of course one complaint at the present time, which the repeal of section 114 is expected to assist in remedying, is that the creditors do not get anything anyway, in many cases. If the effect, then, of repealing section 114 is to reinstate, at a small expense, certain safeguards which will lead to a better realization of assets for the creditors, they will be better off in the end notwithstanding additional small expenses.

Senator WILLIS: Has the department had complaints about Section 114?

Mr. MACDONALD: Yes, and a proposal from a number of sources, particularly interested in bankruptcy administration, including the Canadian Bar Association—originating with the Commercial Section—and the Chief Justice of the court having bankruptcy jurisdiction in one of the provinces, to the effect that if the complete revision of the act was still a considerable distance away, at least steps should be taken to repeal or modify these provisions.

The CHAIRMAN: The question is, do these provisions really improve the situation as against Section 26 (6) and Sections 114 to 116. In order to qualify under the existing law in a small estate you must have assets left of not more than \$500 after you have taken care of your secured creditors. Now there are some loopholes there: You could have very substantial assets and very substantial secured claims, but the main thing is that you must not have free assets of more than \$500 to come under this. Now under this orderly payment of debts provision you can have as many debts as you like or can incur as long as not one of them is in excess of \$1,000, and as I said in the house you can go on a spending spree. If this is going to take care of the small man then you should put a maximum on the amount of debt, do it in some way, otherwise you may be opening another door to abuses in trying to close this door to some abuses.

Senator KINLEY: You are talking about a spending spree. He could not go on one after he came under this provision.

The CHAIRMAN: No, I am talking of a spending spree as a result of this, and there is no limitation on the overall amount of debt he might have; the only limitation is the amount of each individual debt.

Senator KINLEY: He will not be able to incur more debt if he gets a consolidation order, except in the amount of \$200.

The CHAIRMAN: Once he gets a consolidation order then his rations are reduced very considerably because he cannot incur fresh debt of more than \$200 until he has paid off what he owes.

Mr. MACDONALD: Mr. Chairman, it is somewhat difficult for me to maintain a proper line between trying to explain some of these provisions—

The CHAIRMAN: I know we have been making it tough for you.

Mr. MACDONALD: It is not that. I just do not want to overstep what is my proper function. Perhaps I might make one comment on your observation about a spending spree. I doubt that the existence of Part X would, in itself, be inducement for a person to dissipate resources, because if he is that way inclined he is probably going to do so anyway and then go into bankruptcy; and under Part X he is not relieved from the ultimate payment of any of his debts. Under Part X he must, eventually, discharge them all. In fact the consolidation order may not delay complete payment of his debts beyond three years without either the consent of all the creditors concerned or the approval of the court.

The CHAIRMAN: You are enlarging the access road to the use of these facilities. That is what you are doing, isn't that right? Once you have raised the limit to \$1,000 as against \$500 over and above the amount of secured claims I say you are enlarging the access road to using the facilities of this act and if this is intended, to still deal with small estates, let us circumscribe it.

Mr. MACDONALD: Just one thing I should add to that, is to point out the operation of Part X, will exclude the operation of the ordinary provisions of the Bankruptcy Act. If a debtor comes forward to the clerk of the court and says: "I want to have a consolidation order" and if any of his creditors, whether he is a creditor for less than \$1,000 or more, says to himself: "that man is able to meet his debts or he has got property which is available for that purpose", no such creditor is obliged to submit to a consolidation order; he can place the man in bankruptcy under the ordinary provisions of the act. In fact this Part X will probably have its greatest application where there is considerable confidence between the debtor on the one hand and his creditors on the other and where creditors say: "Yes, we think that under this arrangement, where you are ordered to pay so much into the court regularly for distribution to us until all your debts are paid, we are going to be much better off than if we push you into bankruptcy which we can always do whether a consolidation order has been made or afterwards."

Senator KINLEY: Suppose a consolidation order is made, can you push him into bankruptcy then?

Mr. MACDONALD: Yes.

Senator KINLEY: What then is his protection?

Mr. MACDONALD: Then the situation changes and his protection is simply what is afforded a bankrupt under the ordinary provisions of the Bankruptcy Act.

Senator ASELTINE: Whether he makes his payments or not?

Mr. MACDONALD: Yes, Senator Aseltine. That was the situation under the provincial legislation which Part X would replace, as requested, from province to province.

Senator KINLEY: What is the virtue of the consolidation order? If the consolidation order is there he does not seem to have any protection against going into bankruptcy?

Mr. MACDONALD: Well, he would have this protection under the consolidation order, that once the consolidation order is issued, then a creditor in respect of a claim to which the Part applies, has his hand stayed as far as proceeding against the debtor in the ordinary way is concerned—as far as proceeding to judgment and execution is concerned. He could still push him into bankruptcy, if the man was amenable to bankruptcy before, but he would hesitate before taking that step if he saw that under the consolidation order he and the other creditors were being paid.

Senator KINLEY: Does not the consolidation order give the creditor what is, in effect, a judgment? Do not they register them as people who have judgments?

The CHAIRMAN: It becomes a judgment of the court.

Mr. MACDONALD: That is correct.

Senator DAVIES: Are the objects of these amendments, in the main, to protect the creditor or to help the bankrupt?

The CHAIRMAN: I think it is to help the debtor.

Senator KINLEY: Do not they help them both?

The CHAIRMAN: When you talk about the orderly payment of debts, that must be at the instance of the debtor.

Senator KINLEY: That is if he has the money. You cannot get blood out of a turnip.

The CHAIRMAN: I notice you are excluding from the claims which may qualify for a consolidation a debt incurred by a trader or merchant in the

ordinary course of his business. From the information I have, I think it would appear that in Ontario possibly over 50 per cent of the proceedings under the small assets provisions in section 26 of the act now are in relation to these small merchants.

Senator DROUIN: The same situation obtains in Quebec too.

The CHAIRMAN: Therefore, I am wondering why you exclude—

Senator DROUIN: —those who need it most.

The CHAIRMAN: Yes.

Mr. MACDONALD: I cannot speak for Ontario at the moment. We will see if information is available in that respect. In the province of Quebec it is certainly not the case that the large proportion of summary administration bankruptcies are those of traders. The large proportion come from wage earners.

As to why trading debts are excluded, that provision is taken from the two acts that were copied. Perhaps I might go back for a moment and finish the description of how Part X came about, because I left it with legislation in effect in Manitoba and legislation in effect, but not proclaimed, in Alberta. Somebody in Alberta apparently had a question in his mind as to the constitutional validity of the Orderly Payment of Debts Act, so there was a reference by the province of Alberta to the court as to whether the act was constitutional. That reference eventually reached the Supreme Court of Canada which, I think in late 1959 or early 1960, gave a judgment to the effect that the Orderly Payment of Debts Act of Alberta was *ultra vires* Parliament because it impinged on Parliament's jurisdiction over bankruptcy and insolvency.

The CHAIRMAN: You mean *ultra vires* the legislature?

Mr. MACDONALD: Yes.

The CHAIRMAN: You said "Parliament".

Mr. MACDONALD: Yes, I am sorry—*ultra vires* the legislature of the Province. That judgment, of course, also affected the Manitoba legislation, from which the Alberta legislation had been closely copied, so requests were immediately received from the province of Manitoba, followed shortly by a request from the province of Alberta, that since this jurisdiction lay in Parliament and not in the provincial legislatures, Parliament should enact legislation, corresponding to the provincial acts, which could be proclaimed as requested, province by province. Part X is copied from or patterned on these two acts of Manitoba and Alberta. That will explain some of the drafting.

Senator DROUIN: Mr. Chairman, can I put a further question?

The CHAIRMAN: Yes, certainly.

Senator DROUIN: Mr. MacDonald, if I understand you well, in reply to a very pertinent question put by Senator Willis, you say that subsection 6 of section 26 and sections 114, 115 and 116 will be repealed and replaced by this Part X?

The CHAIRMAN: No, not necessarily.

Senator DROUIN: They will not exist, and the province not availing itself of this Part X, or making a request for such a proclamation, will lose the advantages and benefits of subsection 6 of section 26 and sections 114 to 116. They will lose them anyway, and the repealing of these sections will, in other words, force all provinces for the purposes of dealing with small estates, to request the application of this Part X, as enacted. Would not it be better in your mind—and it is your opinion I would like, and I think it would be

very enlightening for the honourable senators to hear it—would not it be better to keep these sections 114 to 116 in case a province does not wish to make the request for the provisions of Part X?

Mr. MACDONALD: With respect, Senator Drouin, I would not regard the two as that closely related.

Senator DROUIN: You answered to the chairman to that effect, I think, in dealing with his first question on parallels.

The CHAIRMAN: What Mr. MacDonald has said now is in line with that, because parallel lines may meet at infinity, but they do not meet earlier than that. Mr. MacDonald now says they are not related and, therefore, they are parallel lines. I would think that is all the more reason why the act could stand both provisions.

Senator KINLEY: The parallel lines may meet when we get to bankruptcy.

Senator DROUIN: If you remove one line there is no more parallel.

Mr. MACDONALD: They are related in the sense that they both have an effect on certain small bankruptcies, but they are not in related in the sense that one is a substitution for the other. If the Manitoba and Alberta legislation had never been declared *ultra vires*, and was still in existence, we would still have received the representations for the repeal of section 114, and the related provisions. In a province where Part X does not come into effect, although section 114 goes out, the only difference will be that when the small bankrupt, who was previously affected by section 114, goes into bankruptcy the trustee of his estate will have to surround himself with those safeguards of which, by section 114, he was relieved. He will have to file a bond and see to the appointment of inspectors, and do a number of other things.

Senator DROUIN: And that is not good for small estates; it increases the expenses.

Mr. MACDONALD: The complaint today, you see, is that by reason of the absence of those safeguards the creditors are getting nothing from many estates anyway. Now if, at the small expense of reinstating these provisions, the result is that there is something for the creditors, then they are better off.

The CHAIRMAN: I think it is quite clear to any person who has had bankruptcy experience that inspectors in many, many cases are very valuable persons to have because they are out of the trade in which this person has been operating, and they have a nose for business operations, and devious methods, and they are able, very often, to find assets which would otherwise be concealed in a way that a trustee and the creditors might not get at them.

Senator ASELTINE: What are the provisions of the Creditors' Arrangement Act? Doesn't that prevent bankruptcy?

Mr. MACDONALD: The Superintendent will have to tell you about that.

The CHAIRMAN: Just one other question I wanted to throw at you, Mr. MacDonald, for the moment—if we just struck out the sections involved in repeal, the present sections in the Bankruptcy Act, and left in those provisions under the new Part X, then and without any provision that it comes into force only when there is a request made—just leave it as it is with Part X added to the Bankruptcy Act, then those who want the Orderly Payments provisions can avail of them, and those who find they fit better into section 26 (6) have that. Why the mutilation?

Mr. MACDONALD: The reason for repeal is that in the opinion of many people, including, as I mentioned, the Canadian Bar Association and the Commercial Law Section of the Canadian Bar Association, which is made up of, I would say, some of the most prominent lawyers in bankruptcy practise in Canada, the repeal of section 114 would go a considerable distance toward

reducing the abuses under the Act to which I have referred. This opinion was concurred in by others. Although I cannot put my finger on them now, the same suggestion came independently from other sources interested in the administration of bankruptcy law as well. One of those sources which I did mention was the Chief Justice, a very experienced person in bankruptcy matters, of one of the Superior Courts of the provinces, which Superior Court is charged with jurisdiction in bankruptcy.

The CHAIRMAN: There is a non sequitur in what you are saying. Because there are admitted defects in sections 114 to 116 you say "repeal". Can't we tidy them up? Repeal doesn't necessarily flow from the fact that there are some abuses.

Mr. MACDONALD: Well, the answer to that would come, I think, from a clause by clause examination of section 114. Now if you look at section 114—

Senator DROUIN: What you could do, Mr. Chairman, is perhaps repeal section 26(6) and sections 114 to 116 but make the provisions of Part X applicable to all provinces without proclamation.

Senator WILLIS: I don't think Ontario would take that.

Senator DROUIN: Give them the choice and, as you say, tidy up sections 114 to 116.

Senator THORVALDSON: I was wondering—there is obviously a lot of disagreement about these things and I was wondering if it wouldn't be wise in the light of this discussion to suggest to the law officers that they take another look at this and see if they can come up with something.

Senator DROUIN: Could we have a look at the Bar Association's submissions?

Mr. MACDONALD: Yes.

Senator THORVALDSON: I personally would like to have a look at some of these things.

The CHAIRMAN: We are adjourning this consideration until next Wednesday to hear the other side. I shouldn't say "the other side"—I should say those of the public who have representations to make. Maybe some of them will support it or maybe all of them will support it.

Senator WILLIS: What about trustees, will we have them?

The CHAIRMAN: A number have written in, and I have told you about the Board of Trade, and there is a number of organizations in Montreal and Niagara Falls who will send in briefs instead of appearing. I would like to have the Registrar of Bankruptcy from Toronto.

Senator ASELTINE: How about the provinces of Manitoba and Alberta, will they be represented?

The CHAIRMAN: Anybody who wants to appear can appear.

Senator DROUIN: Can we have a look at the submission of the Canadian Bar Association on this point?

The CHAIRMAN: Is the submission of the Canadian Bar Association on this point lengthy?

Mr. MACDONALD: No.

The CHAIRMAN: If the Clerk had it maybe he could mimeograph it and we could have copies.

Senator DAVIES: Is this a private bill or is it a Government measure?

The CHAIRMAN: It is a Government measure.

Senator ISNOR: May I ask a question. As you know I am not a lawyer—

The CHAIRMAN: I don't think the Canadian Bar Association will help us because while it made representations in relation to the Bankruptcy Act it didn't make a submission in relation to Part X.

Mr. MACDONALD: It made it for the repeal of 26(6) and 114 to 116.

Senator ISNOR: It would be repealed with nothing to replace it?

Mr. MACDONALD: I will check on that but I think that is the case.

The CHAIRMAN: Let us make it available to the members of the committee. If you give the Clerk of the Committee the submissions he will get it mimeographed.

Mr. MACDONALD: May I direct your attention to a number of paragraphs in section 114. I do this because I think there may be a little misunderstanding as to what is going to be the effect of repealing section 114.

Senator ISNOR: Before he starts on section 114, what I am going to say has a bearing on that. Perhaps Mr. MacDonald would tell us, and I repeat I am not a lawyer, just a simple businessman.

The CHAIRMAN: There is one word too many in that. You should take out the word "simple".

Senator ISNOR: Dealing with Part X, section 173 (a), "clerk" means a clerk of the court; subsection (b), "court" means

(i) in the Province of Alberta, the district court,

(ii) in the Province of Manitoba, the county court,

I am going to ask why you deal only with the provinces of Alberta and Manitoba.

The CHAIRMAN: Read subsection 3.

Senator ISNOR: Why could you not say "in any province such court—" and have uniformity while you are about it? Why should not clause 3 read "in any province"?

Mr. MACDONALD: The reason, Senator Isnor, is this, that we knew what court the provinces of Alberta and Manitoba wished designated because they had acts on their statute books which already designated these courts. In the other provinces we did not know which courts they wished designated. We did not know whether they wished Part X applied. We knew the wishes of two provinces, so we mentioned them, and with respect to other provinces, in the case of which we did not even know they wished to have Part X, we said that we would leave the matter open.

The CHAIRMAN: But, Mr. MacDonald, we are here talking about federal legislation. This bill is not being passed to give validity to two provincial laws just because those laws have been declared *ultra vires* the provinces. We are passing something here which is good for the people, and which is in the public interest. You are saying now that we are passing it on a basis having regard to two provinces that we know will take it, and as to the rest we are saying: "This is in the public interest, but you can exercise your own judgment as to whether you want to take it or not". I cannot conceive that as being the way that we should act in framing a statute. Looked at in that light this looks more like enabling legislation in a situation where there is some doubt as to where the jurisdiction really is. Two parties are going to join in this, and it seems to me that you are saying that by their so doing they are giving it validity. I do not think that that is the kind of approach we should have to legislation.

Mr. MACDONALD: I do not know whether that calls for any comment from me, Senator Hayden.

The CHAIRMAN: Maybe I should not have made it to you.

Mr. MACDONALD: It has just occurred to me that such aspect is not lacking in other fields of legislation. There is the Lord's Day Act—

Senator ISNOR: But we are dealing with this act, and we are trying to make it uniform for all of Canada.

Senator KINLEY: Senator Isnor asked about the clerk. It seems to me that if a province accepts the act then it must accept the clerk.

The CHAIRMAN: No, it says that the clerk who shall function in provinces other than the provinces of Alberta and Manitoba shall be—

Senator KINLEY: What about section 175?

The CHAIRMAN: —would be the person designated by the regulations in that province. It says:

...in any other province such court as is designated from time to time by the regulations for the purposes of this Part...

Senator ASELTINE: Who makes the regulations?

Mr. MACDONALD: The Governor in Council.

Senator KINLEY: The province.

The CHAIRMAN: No, not the province but the Governor in Council.

Senator KINLEY: What regulations?

The CHAIRMAN: The regulations made under this Part X.

Senator KINLEY: There is a rural and an urban problem connected with this. I know Senator Higgins talked about centralization. In every county there is a clerk or prothonotary. He deals with every item of justice in the courts. He is an informed man and he does not get much pay. He has an office and he deals with all matters, and he plays no favorites. I think the clerk is indicated, especially in rural areas, but in the cities there is no problem because there are lawyers there.

Mr. MACDONALD: Any province that asks for the proclamation of Part X will throw a considerable potential burden upon the provincial officers who are to be designated, such as the clerks of the district or county courts.

Senator KINLEY: They are not that busy.

Mr. MACDONALD: The province must be prepared to put its finger on the person who is to act, and to say that by virtue of his office as clerk of the county court, or clerk of the district court, or the clerk of some other court, he is expected to carry out the functions imposed by this part. The fees that may be designated may be quite small. In other words, Part X supposes that a considerable duty—I will not say burden—will be placed upon provincial officers. That is why Part X leaves it open to the province to take that responsibility of saying: "This is the court".

The CHAIRMAN: There is no clause in this bill that says that.

Mr. MACDONALD: I am sorry; the province will have to indicate to the federal authority which court it wishes to designate.

The CHAIRMAN: There is nothing in the act that says that the province has any authority to say anything to the Governor in Council.

Senator ASELTINE: The regulations are federal.

The CHAIRMAN: That is right. The Governor in Council makes these regulations, and fixes the fees.

Senator WILLIS: What jurisdiction would the Superintendent of Bankruptcy have over these clerks?

The CHAIRMAN: I would think none, under this bill.

Senator WILLIS: He has now jurisdiction over the provincial superintendents, has he not?

Mr. MACDONALD: Over the trustees, Senator Willis. Section 197 of Part X provides—and this points up the fact that these are provincial officers—that the accounts of every clerk relating to proceedings under this part shall be subject to audit in the same manner as if he were a provincial officer.

Senator ISNOR: All you have to do to change that is to put a period after the word "audit", and cut out the remaining words.

The CHAIRMAN: Section 195 deals with the question, and says:

- (1) Upon the issue of any consolidation order, the clerk shall forward a copy thereof to the Superintendent of Bankruptcy.
- (2) The clerk shall report to the Superintendent of Bankruptcy upon the conclusion of each proceedings taken under this part...

So there are reports going to the Superintendent of Bankruptcy.

Senator DROUIN: There is no difficulty with respect to the provinces of Alberta and Manitoba which have already chosen the courts, but with respect to the other provinces the court will be designated by the Governor in Council.

The CHAIRMAN: Yes.

Senator ASELTINE: It would be.

The CHAIRMAN: I think we are approaching the time at which we might adjourn for today.

Senator ASELTINE: I would like to mention something while we are on the point. In Saskatchewan we have seventeen rural judicial centres, and those rural centres are served by the responsible clerks of the district court. Why could they not act? In the larger centres like Prince Albert, Saskatoon, Regina and Moose Jaw the ordinary registrar might take over.

The CHAIRMAN: There is no reason why not.

Senator DROUIN: Where there is a registrar then he could act, and where there is none then the clerk could act. I think that would be reasonable.

The CHAIRMAN: Mr. MacDonald has indicated he wants to take up two minutes to deal with this point. I did not impose the time limit of two minutes; he did.

Mr. MACDONALD: This may be important and might help the discussion. It relates to the question whether hardship is created in a province by the straight repeal of section 114 and related sections if Part X is not proclaimed. In the first place the fact that section 114 is repealed does not prevent a person still going into bankruptcy whose estate would have come under section 114. He may still go into bankruptcy, but when the trustee comes to administer his estate the provisions of section 114 will no longer apply. What is the effect of those provisions that no longer apply? That is the question.

Section 114(a), of course, does not affect the matter. It simply says:

...all proceedings under this section shall be entitled "Summary Administration"...

so we can put that aside.

In the second place he finds that he has to deposit a bond which he did not have to do before. That is the first thing, and that will react to the protection of the creditors.

Senator WILLIS: That costs money.

Mr. MACDONALD: There would be only a small expense, not a great expense, in connection with that.

In the third place, this provision will no longer apply—

(c) the trustee shall apply to the court to fix a date for the hearing of the application for the discharge of the bankrupt and shall include notice thereof in the notice of the first meeting.

That means that in the past, since this provision was in force, the creditors got the notice of the bankruptcy and in that same envelope they got a notice that there would be an application made to the court for his discharge. That, among the creditors, created a very bad reaction. They said: "Well, what are the objects of these proceedings?"

Senator DROUIN: They felt railroaded.

Senator WILLIS: We could repeal that, without repealing the whole section.

Mr. MACDONALD: Then we come to (d) which says:

(d) Notice of the bankruptcy shall be published in the Canada Gazette in the prescribed form but shall not be published in a local newspaper unless deemed expedient by the trustee or ordered by the court.

In other words, though at present there has to be a notice in the Royal Gazette, there does not have to be a notice in the local newspaper. If section 114 is repealed there will have to be a notice in the local newspaper, and that may not be a bad thing.

I will stop there for the moment, but if we take the remaining paragraphs and read them one by one, the effect of eliminating them is not as great as might appear at first.

Senator WILLIS: As I understand it, in 1949, the early part decided that the poor man who wanted to go into bankruptcy should have special provisions.

The CHAIRMAN: Actually, more than that—we were honoured at that time by the presence of the assistant deputy minister, who at the moment was discharging the duty of Superintendent of Bankruptcy.

Mr. MACDONALD: A post which he had been in for several months.

The CHAIRMAN: That is right. Mr. Riley had been there before and here was this document presented to us. There was the strongest recommendation for these summary state proceedings and we succumbed to the persuasive presentation and put them in. Now we are told we can perform a bit of surgery and the statute would not suffer.

Senator DROUIN: That was parallel.

Mr. MACDONALD: When I came before you in 1949 as Superintendent of Bankruptcy, I had held that office for a very short while and was in possession of a ready made bill.

The CHAIRMAN: You have handled it very well.

Senator DROUIN: Thank you, Mr. MacDonald.

The CHAIRMAN: May I put this resolution of the Canadian Bar Association on the record. It is:

Whereas there have been great abuses arising from the Summary Administration Provisions of the Bankruptcy Act

Resolved that the provisions be repealed, or, in the alternative, that section 14 be amended by repealing subsections c, g and h thereof.

Senator LAMBERT: At the outset of the hearing this morning, Mr. Chairman, you made a suggestion to divide the attention of this bill into two parts. We have had valuable enlightenment through Mr. MacDonald's evidence this morning. In view of the contentious points mentioned, it would be advisable

to have The Bar Association explain what it means by that resolution, and also any other people who are interested in this. Then we could decide whether or not this Part 10 should be adopted as it is or with some change, or the original act amended. It seems to me that the amendment of section 114 covers the point.

Senator DROUIN: Has this bill been submitted to the Canadian Bar?

The CHAIRMAN: No. When the Board of Trade appeared, they had a special committee, which has been sitting for several years, and they have lawyers who are experienced practitioners in the field of bankruptcy, on that committee. They submitted a very lengthy brief dealing with all the aspects, but they also dealt with sections 114 to 116 and 266. I read parts of that when I was speaking in the Senate. They will be here to elaborate on that. There will be some of those lawyers on that committee who were undoubtedly on the committee of the Bar Association which dealt with this matter and we can get their viewpoint.

The committee adjourned its consideration of the bill until Wednesday, November 21, at 10 a.m.



First Session—Twenty-fifth Parliament
1962

THE SENATE OF CANADA
PROCEEDINGS
OF THE
STANDING COMMITTEE
ON

BANKING AND COMMERCE

To whom was referred the Bill S-2, intituled: "An Act to amend the Bankruptcy Act".

The Honourable SALTER A. HAYDEN, Chairman

No. 2

WEDNESDAY, NOVEMBER 21, 1962

WITNESSES:

Mr. A. C. Crysler, Q.C., Legal Secretary, The Board of Trade of Metropolitan Toronto; Mr. Ben Luxenberg, Q.C., Vice Chairman, Bankruptcy Committee, The Board of Trade of Metropolitan Toronto; Mr. T. D. MacDonald, Assistant Deputy Minister of Justice; Mr. John Larose, Superintendent of Bankruptcy, Department of Justice and Mr. R. W. Stevens, Counsel, Credit Grantors Association of Canada.

APPENDIX "A"

Brief submitted by the Credit Grantors Association of Canada.

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1962

THE STANDING COMMITTEE ON BANKING AND COMMERCE

The Honourable Salter Adrian Hayden, *Chairman*

The Honourable Senators

Aseltine	Gouin	O'Leary (<i>Carleton</i>)
Baird	Hayden	Paterson
Beaubien (<i>Bedford</i>)	Higgins	Pearson
Beaubien (<i>Provencher</i>)	Horner	Pouliot
Bouffard	Howard	Power
*Brooks	Hugessen	Pratt
Burchill	Irvine	Reid
Campbell	Isnor	Robertson
Choquette	Kinley	Roebuck
Connolly (<i>Ottawa West</i>)	Lambert	Smith (<i>Kamloops</i>)
Crerar	Leonard	Taylor (<i>Norfolk</i>)
Croll	*Macdonald (<i>Brantford</i>)	Thorvaldson
Davies	McCutcheon	Turgeon
Dessureault	McKeen	Vaillancourt
Drouin	McLean	Vien
Emerson	Molson	Willis
Farris	Monette	Woodrow—50
Gershaw		

(Quorum 9)

*Ex officio member.

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Thursday, November 8th, 1962:

“Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Higgins, seconded by the Honourable Senator Hnatyshyn, for second reading of the Bill S-2, intituled: ‘An Act to amend the Bankruptcy Act’.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Brooks, P.C., moved, seconded by the Honourable Senator Choquette, that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative.”

J. F. MacNEILL,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

WEDNESDAY, November 21, 1962.

Pursuant to adjournment and notice the Standing Committee Banking and Commerce met this day at 10.00 a.m.

Present: The Honourable Senators:—Hayden, *Chairman*; Aseltine, Croll, Drouin, Gershaw, Gouin, Horner, Hugessen, Irvine, Isnor, Kinley, Lambert, Leonard, McCutcheon, McKeen, McLean, Power, Reid, Roebuck, Smith (*Kamloops*), Taylor (*Norfolk*), Turgeon, Vien, Willis and Woodrow.

In attendance:—Mr. E. R. Hopkins, Law Clerk and Parliamentary Counsel and the Official Reporters of the Senate.

Bill S-2, intituled “An Act to amend the Bankruptcy Act”, was further considered.

The following witnesses were heard with respect to the said Bill:—

Mr. A. C. Crysler, Q.C., Legal Secretary, The Board of Trade of Metropolitan Toronto; Mr. Ben Luxenberg, Q.C., Vice Chairman, Bankruptcy Committee, The Board of Trade of Metropolitan Toronto; Mr. T. D. MacDonald, Assistant Deputy Minister of Justice; Mr. John Larose, Superintendent of Bankruptcy, Department of Justice and Mr. R. W. Stevens, Counsel, Credit Grantors Association of Canada.

On Motion of the Honourable Senator Croll is was ORDERED that the submission of the Credit Grantors Association of Canada be printed as an appendix to today's proceedings.

The Chairman (The Honourable Senator Hayden) read into the record letters submitted by Mr. Frederick E. Tyler, Executive Secretary, Canadian Collectors Association and Mr. Wildfrid Bitzer, Honorary Consul, Consulate of the Federal Republic of Germany.

The Chairman also read an excerpt from a letter received from The Supreme Court of Ontario in Bankruptcy.

At 12.30 p.m. the Committee adjourned further consideration of the Bill *sine die*.

Attest.

James D. Macdonald,
Clerk of the Committee.

THE SENATE

STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

OTTAWA, Wednesday, November 21, 1962

The Standing Committee on Banking and Commerce, to which was referred Bill S-2, to amend the Bankruptcy Act, resumed this day at 10 a.m.

Senator Salter A. Hayden (*Chairman*), in the Chair.

The CHAIRMAN: Honourable senators, it is ten o'clock, and we have a quorum. We have before us, continued from last week, Bill S-2, and we are going to hear representations from various organizations. We also have some briefs which have been submitted, and the first one to which I was going to refer is from the Board of Trade, Toronto, which we will have distributed, and there is a group here representing the Board of Trade: Mr. Ben Luxenberg, Mr. J. L. Biddell, Mr. L. W. Houlden, and Mr. A. C. Crysler. I understood Mr. Luxenberg was going to present the brief, but he seems to have slipped out for a moment. However, Mr. Crysler is here and he is prepared to proceed with the brief. As soon as the copies are distributed we will call on Mr. Crysler.

Mr. A. C. Crysler: Mr. Chairman and gentlemen, I would make this plea that as I am not actually the leader of this small delegation I be allowed to retire and hand over to Mr. Luxenberg when he enters the room. I think the best way in which to approach this matter, sir, with your permission, is for me to read the brief.

It is addressed to The Honourable Senator Salter Hayden, Q.C., Chairman, and members of the Senate Committee on Banking and Commerce. It refers to Senate Bill S-2, to amend the Bankruptcy Act.

Gentlemen: The Board of Trade of Metropolitan Toronto welcomes this opportunity to appear before the Senate Committee on Banking and Commerce and express its views concerning Bill S-2, An Act to amend the Bankruptcy Act.

It is desired initially to acquaint you with the nature and extent of the Board's membership. Our membership consists of approximately 9800 persons representing large and small business firms engaged in all phases of business activity and in the professions. While this membership is concentrated mainly in the Toronto area, the larger member firms conduct businesses which in numerous cases are provincial or national in scope, or extend into the area of international trade. In view of the nature of this membership, the Board believes that it can claim fairly to represent the views of a major cross-section of business and professional interests.

The Board has had a long-standing interest in bankruptcy and insolvency legislation consequent on the importance of that field of legislation throughout the commercial and trading community. We participated in the studies which led up to the revision of the Bankruptcy Act in 1949 and were privileged to appear before this Committee at that time and express our views to you. Since the 1949 revision, a standing committee of the Board has carried out a

comprehensive and continuing study of experience under the Act. This Committee is comprised of persons who have special knowledge of the subject. Its membership consists of leading trustees, liquidators, members of the accounting and legal professions and business executives who have specialized in bankruptcy matters.

Upon learning that it was the intention of the Government to consider revisions to the 1949 Act, the Board's study was reviewed and brought up to date and a comprehensive Brief setting out its views concerning the revision of the Act was submitted to J. S. Larose, Esq., Superintendent of Bankruptcy under date of December 7, 1961. The portion of this Brief which refers to the Summary Administration provisions of the Bankruptcy Act will be referred to later.

Upon examining Part X. Orderly Payment of Debts, which Bill S-2 proposes to enact, in relation to the Summary Administration provisions, Sections 114-116 of the Bankruptcy Act, the principal conclusion which the Board has reached is that the Orderly Payment of Debts provisions are not an alternative to the Summary Administration provisions. We are of the view that the Summary Administration provisions should remain in the Act whether or not the Orderly Payment of Debts provisions are enacted. It is, however, recognized that the Summary Administration provisions do require a measure of revision to overcome certain weaknesses which have become apparent from experience. Our views concerning the revisions needed, and which we believe would be sufficient for the purpose, are set out on Page 32 of our Brief dated December 7, 1961. For your information, we quote that page as follows:

Summary Administration—Secs. 114-116

Certain weaknesses have become apparent in operation under the summary administration provisions in Secs. 114-116. The following sub-sections of S. 114 involve the principal weaknesses and should be repealed for the reasons stated;

Subsection (c), for the reason that a bad impression is created on the part of creditors who receive notification of discharge proceedings along with the notice of bankruptcy, especially in those instances where the amount of debts involved is large. The effect of such a change would be to leave bankrupts under summary administration to apply for discharge in the usual way.

Mr. Luxenberg has just entered the room, Perhaps he may continue with this Mr. Chairman.

The CHAIRMAN: Yes.

Mr. B. Luxenberg, Q.C.:

Subsection (f), which would leave the bankrupt under summary administration free to submit a proposal under the proposal provisions of the Act. In any event there is little to be gained in practice by this provision in the summary administration sections.

Subsection (h), owing to the fact that its effect is to exclude examination under oath and make it more difficult to ascertain whether any improper use is being made of the summary administration proceedings.

Subsection (g) should be amended, so that there may be inspectors if the creditors at the first meeting so decide. The reason for this is that under the present procedure the Court only has before it the debtor's statement of assets and liabilities. Instances have occurred in which important transfers of property have taken place prior to bankruptcy

without being disclosed in the debtor's statement before the Court. The appointment and activities of inspectors in such cases would serve a valuable purpose in investigating prior transfers of property and serve to guard against any undesirable advantage being taken of the summary administration proceedings in this regard.

Our reasons for considering that Part X. Orderly Payment of Debts, is not an alternative to the Summary Administration provisions, Sections 114-116 of the Act, are as follows:

(1) Part X provides for a consolidation of, but not relief from, debts. This is not sufficient for insolvent or bankrupt persons whose debts are so large that it is not possible to pay them off in full. The financial affairs of such persons cannot be rehabilitated without complete relief from such part of their debts as is necessary to reduce their overall financial commitment to an amount which their financial circumstances enables them to retire. Insolvents and bankrupts in this position will have to resort to the Bankruptcy Act in order to get relief from that part of their indebtedness which they cannot retire. If they have not available to them the Summary Administration provisions, they will have to resort to the Ordinary provisions which are more complicated, entail more work in administration and are more costly.

(2) Under the provisions proposed, Section 174(2)(d), trade debts will not come within Part X. Orderly Payment of Debts. Thus, a salaried employee who wished to make arrangements concerning trade debts incurred while in business for himself, would not be able to avail himself of the proposed provisions for Orderly Payment of Debts.

Our information is that the Osgoode Hall office of the Supreme Court of Ontario in Bankruptcy had 1259 filings in 1961, of which 651 were Summary Administrations. As of the latter part of October 1962, the Osgoode Hall office had 1244 filings, of which 641 were Summary Administrations. Our practicing barristers and liquidators inform us that the majority of these Summary Administrations arise in the case of persons who failed in businesses of their own and ultimately take employment. As will be seen, therefore, the most of those under Summary Administrations in this area, would not be able to take advantage of Part X. Orderly Payment of Debts.

(3) Without the Summary Administration provisions, revised as we have proposed, there would be difficulty in getting creditors to act as inspectors in small estate with little or no assets.

(4) Jurisdiction would be transferred from the Bankruptcy Court and Trustees to the Clerks of Other Courts. The effect of this transfer would be to lose a considerable degree of experience which has been developed in the Bankruptcy Court and on the part of licenced Trustees.

(5) The description of the functions and duties of the Clerks of Court indicates that the creditors will not have effective control and that effective control will be vested in the Clerks of the Courts.

The effect of that is that you are making the clerks of the courts the judiciary; they will work out the proposals.

(6) There is no provision for Inspectors in Part X. Orderly Payment of Debts. It will be noted that in the quotation from the Board's Brief of December 7, 1961, it is proposed that the present Summary Administration provisions should be amended to provide for Inspectors if the creditors at the first meeting so decided. The reasons for this are stated. The Board was pleased to observe from reading the Debates of the Senate for Tuesday, October 16 and Thursday,

October 18 that different of the honourable members who spoke in the Debate on Bill S-2, were in agreement that provision should be made for the appointment of inspectors.

(7) There is lack of provision in Part X. Orderly Payment of Debts, for the examination of debtors in initial proceedings to ascertain information concerning their affairs. While Section 190 of Bill S-2 refers to examination of debtors, the section seems to only apply where there is a consolidation order.

(8) Part X. Orderly Payment of Debts, does not cover debts due to Governments. In the case of business insolvencies or bankruptcies, there is frequently nothing left for creditors after tax claims have been satisfied.

That part does not apply to governments. Therefore the governments would have the perfect right to proceed as they see fit, even though the debtor had made an application under that part. In that way, the debtor might be, and probably would be, plagued with garnishee orders while this part is in effect.

The CHAIRMAN: To the extent that there are exclusions from the application of Part X, the ordinary proceedings would be open and might go on, following the proceedings under Part X.

Mr. LUXENBERG: I think it would be parallel to putting an end to the proceedings under Part X.

The CHAIRMAN: They would start to do it under Part X.

Senator McCUTCHEON: They would meet pretty soon.

Mr. LUXENBERG: This brief continues: (9) Under the provisions of Section 189, Consolidation for Orderly Payment of Debts, the consolidation has to be varied when there are new debts. This leaves consolidation schemes under Part X in a position of instability.

(10) It is stated that there has been a good experience in the Province of Manitoba under provincial legislation similar to the proposed Part X for Orderly Payment of Debts. This experience would not necessarily be the same in provinces such as Ontario where there are so many more insolvencies and bankruptcies.

In conclusion, this Board recognizes that legislation such as Part X providing for Orderly Payment of Debts could serve a useful purpose where there are no trade debts, present or past, and where the total amount of indebtedness is not more than the debtor could cope with under a consolidation arrangement. It is suggested, however, that before adoption of Part X Orderly Payment of Debts, more consideration should be given to its relation to consolidation provisions in other provinces which have taken a different form from the legislation in Manitoba and Alberta. For instance, in Ontario there is legislation which provides for the consolidation of Division Court Judgments. It would be advisable to ensure that the proposed addition to the Bankruptcy Act will be properly related to this legislation in Ontario and it may be to different legislative approaches to the problem in other provinces. A considerable investigation, however, will be involved in such a study. Respectfully submitted, (G. Allan Burton) President, (J. W. Wakelin) General Manager.

Honourable senators, I should state that our real position is that the summary administration sections should not be repealed. They have served a useful purpose. With regard to the act itself, there is a great deal of merit in it but I think it requires considerable amendment and further study.

The CHAIRMAN: This morning we are dealing only with the bill and therefore only with the summary administration sections and the proposed substitution.

Senator CROLL: Perhaps at this time Mr. MacDonald could meet the points that are raised in this bill?

The CHAIRMAN: We could leave that to Mr. MacDonald; he may prefer to reply to all the representations.

Senator CROLL: They may be different and this would keep us in the picture. They have made some specific recommendations and I am not too well fitted to meet them. They bother me somewhat and Mr. MacDonald could throw some light on them immediately, while it is fresh in our minds.

The CHAIRMAN: Mr. MacDonald, are you ready to be drafted at this moment to express your views?

Mr. T. D. MacDonald, Assistant Deputy Minister, Department of Justice: I am certainly at the disposal of the committee. If I may make a suggestion, it is that at this stage you might be interested in asking Mr. Luxenberg to run down the paragraphs of Section 114 which he is suggesting be retained, to indicate the usefulness of those paragraphs.

The CHAIRMAN: Mr. Luxenberg, first of all, in Section 114, there have been no changes in (a), namely:

(a) all proceedings under this section shall be entitled "Summary Administration";

There is no comment on that, I take it?

Mr. McCUTCHEON: It is not controversial.

Mr. LUXENBERG: In subsection (c) our suggestion—

Senator CROLL: Would you mind reading subsection (c) to the committee?

Mr. LEONARD: May I suggest that Mr. Luxenberg deal with the provisions of Section 114 to 116 which are to be repealed by this bill?

Mr. LUXENBERG: Under the act, debtors whose assets will not realize more than \$500—and there are many debtors in that position—have the right to take advantage of the Bankruptcy Act and to get loose of that burden of judgments, judgment debtors and garnishees.

The CHAIRMAN: I think the exact wording of the provision to which Mr. Luxenberg is referring is found in section 26, subsection (6) of the act itself.

(6) Where the bankrupt is not a corporation and in the opinion of the official receiver the realizable assets of the bankrupt, after deducting the claims of secured creditors, will not exceed five hundred dollars, the provisions of the Act relating to summary administration of estates shall apply.

That is the authority. That would then bring in the operation of sections 114 to 116, under the act as it stands at present.

Mr. LUXENBERG: At present, when a man wants to come under summary administration, he makes an assignment. At the same time as he makes that assignment, the registrar fixes the date for the hearing of the application for discharge. With the notice calling the first meeting of creditors, there is a notice to the effect that the debtor's application for discharge will be heard at a certain date. As a matter of practice, we find that, while creditors may not want to attend the first meeting and may not bother about it, they sometimes object to the bankrupt getting his discharge. They get this notice of the first meeting and throw it in the waste paper basket, not wishing to bother about it, and then they forget all about the application for discharge which is to be heard in three or four months' time. Now, we think that is unfair to creditors,

and we think that section 114(c), which provides for the fixing of a date of hearing of the application of discharge and including the first notice should be repealed.

Senator CROLL: You say that is not fair to creditors. The creditor gets a notice, a letter, saying there is a meeting and there will be business done—throws the letter in the waste paper basket. What is unfair to the creditor?

The CHAIRMAN: I think it goes a little deeper than that. It looks like a package deal.

Senator CROLL: I realize that, but what is the unfairness?

Mr. LUXENBERG: The unfairness is that I don't think the creditors get ample notice. They get a notice today that six months from today the hearing of the application of discharge will take place.

Senator LEONARD: Are we not jumping ahead of ourselves? The first point for consideration is whether these sections should be repealed in their entirety. The matter between Senator Croll and Mr. Luxenberg is whether they should be amended.

Mr. LUXENBERG: We say the other sections should be retained and they are beneficial.

Senator LEONARD: This bill we have before us repeals these sections as they are now. What I want to know is, what are the benefits given by these three sections which we are going to do away with in order to substitute the orderly payments?

The CHAIRMAN: I think what you want to know is what we would lose if sections 114 to 116 were repealed.

Senator LEONARD: That is right.

Mr. LUXENBERG: Well, this is a cheap, expeditious method for a bankrupt who has not too many assets to have his estate administered and obtain his discharge. We have no advertising, we have no inspectors. At the present time there are no inspectors, and we think there should be. If the creditors so decide, according to our suggestion, then they can make a proposal at the next meeting, if desired. There are no examinations and nothing is sent by registered mail. I say it is an inexpensive way for a man who has very little assets to have his estate administered and get a discharge.

Senator LEONARD: You say that from the standpoint of the debtor and the creditor this method of sections 114, 115 and 116 is at least as good as the orderly payments plan, plus the fact that the debtor gets a complete discharge of the debt?

Mr. LUXENBERG: I would not say that. I think there may be a place for both of them. Orderly payments of debts deal with a settlement of a person's debts, rather than making him assign.

The CHAIRMAN: I think the view I take of this summary administration is that it seems to provide a benefit for the debtor. In other words, he can quickly dispose of his problems and get a reasonably fast discharge from bankruptcy and his debts are gone. If he has to go via Part X and a consolidation order, he is subject to attack from the bankruptcy angle all the time, subject to attack from those who are excluded from enjoying the benefits of Part X, and then he must propound a plan that will lead to the orderly payment of his debts within three years; or if he cannot do it in that length of time the court has to come and see if it will make an order. But then the debtor is hamstrung for a considerable length of time trying to deal with maybe an overload of debts.

Mr. LUXENBERG: In addition, the orderly payment of debts excludes trade debts.

Senator LEONARD: It seems to me that there are benefits in sections 114, 115 and 116 which should be preserved, rather than that they should be repealed merely because you are having another set of rules with respect—

Mr. LUXENBERG: I think there may be room for both.

Senator WILLIS: If the province of Ontario did not adopt orderly payments plan and sections 114 to 116 were repealed, the poor man would be left out.

The CHAIRMAN: He would have to come under the general provisions.

Senator LEONARD: If the province does not request it, do sections 114, 115 and 116 still stand?

The CHAIRMAN: No. Under section 2 they are repealed in any event.

Mr. LUXENBERG: They are repealed, and if the province of Ontario does not see fit to adopt Part X, we have no summary administration sections.

The CHAIRMAN: It looks to me as if the two procedures are covering different fields and there is room for both of them.

Mr. LUXENBERG: Summary administration sections have really nothing to do with Part X at all. I do not know why this is in Part X at all. One provides for orderly payment of debts, and the other something else altogether.

The CHAIRMAN: With that, Mr. MacDonald, do you think we have gone far enough that you would be ready to deal with the points raised in this brief?

Mr. T. D. MACDONALD: Mr. Chairman and honourable senators, I am going to go to the top of page four of the brief. The submission set out there is that Part X is not an alternative to the summary administration provisions of the act. Then there are various reasons given supporting that submission. I think it is common ground that Part X is not an alternative. I think that the real issue that is before you now comes down to this. There seems to be common ground between the bill and the submission of the Board of Trade of Metropolitan Toronto that there should be changes made in section 114. The only difference between the two, the bill on the one hand, and the submission on the other, is that the Board of Trade suggests that section 114 should not be repealed outright but that parts of section 114 should be left. So that it seems to me that the real issue is the usefulness or the value of the parts that would be left.

I had hoped that Mr. Luxenberg would elaborate on that a little more than he did. I had hoped he would go down section 114 and take the paragraphs that he suggests be left and point to the value he attaches to them, because with Mr. Luxenberg's experience I think that would have been very valuable to the committee.

The Superintendent of Bankruptcy is here today, and he of course is the person who has had very long experience in the administration of these provisions, and I think it would be very useful if he were now to take section 114 and to run down each of the provisions that it is suggested be left, and describe to you what is the effect of them, so that you can then come to a conclusion as to what would be the difference between repealing section 114 outright and leaving it in a truncated form.

The CHAIRMAN: Is it the wish of the committee?

Hon. SENATORS: Agreed.

The CHAIRMAN: We will now hear from Mr. Larose.

John S. Larose, Superintendent of Bankruptcy: Mr. Chairman and gentlemen, I think it can safely be said that if you delete the provisions that have been questioned those that remain are either of very little value or are already covered in the ordinary provisions of the act. If they are not of any consequence I might draw your attention to the fact that even with their retention the savings to which Mr. Luxenberg referred are not considerable and in

point of fact my experience has demonstrated that the creditors did not in the long run benefit thereby. The only practical result that is obtained is that the trustee of the estate recovers a larger fee than he would, proportionately speaking, in a non-summary or what we call ordinary bankruptcy.

For example one of these provisions, whose deletion has been recommended, is this.

114. The following provisions apply to the summary administration of estates under this Act, namely,

(d) notice of the bankruptcy shall be published in the *Canada Gazette* in the prescribed form but shall not be published in a local newspaper unless deemed expedient by the trustee or ordered by the court;

I might say I do not recall an incident where it has been ordered by the court and in practice it is left to the discretion of the trustee. The saving is not considerable.

(e) all notices statements and other documents shall be sent by ordinary mail and, other than notices of the first meeting, shall be sent to such creditors only who have proved claims amounting to twenty-five dollars or more;

Many trustees themselves have represented to me that that is of very little if any value. The saving in the cost of postage is inconsiderable and the number of creditors is such, and particularly those with claims of less than \$25, that there is really no great benefit to be derived from that.

Then we have paragraph (i) to which no specific reference has been made, which reads:

(i) the bankrupt shall prepare and execute a statement of affairs in the prescribed form;

But, Mr. Chairman, he is already required to do that in non-summary bankruptcies by section 117 (d).

(j) when the trustee has recovered all that reasonably can be realized out of the property of the bankrupt, he shall, after approval of his final statement by the court, send a notice in the prescribed form to each creditor who has proved his claim, with the dividend to which he is entitled, if any, and proceed to his discharge;

Once again that is the procedure followed in non-summary bankruptcies.

(k) the creditors at the first meeting may authorize the trustee to apply for his discharge without further notice if the bankrupt has not made a proposal and if his examination discloses that there are no assets.

The act itself is based upon the principle of creditor control so that it might be argued in non-summary bankruptcies the creditors could dispense the trustee from the usual notice. Then there is a provision in the act whereby the court may dispense him.

But in that particular aspect of the matter I submit that the saving is of no real consequence in determining whether or not the summary administration provisions should be retained.

One other point raised by Mr. Luxenberg concerned the fact that summary administration provided for the expeditious administration of estates. This may be so, at least it was the intention, and similarly of course it was the intention that the reduction in the formalities would attain a cheaper

administration. However, in practice, once again it has been found that these summary administration estates are not closed as expeditiously as one would expect and there may be several reasons for it, one of those being that the trustees either do not press the debtor to deposit with them the seizable portion of their earnings for the benefit of creditors, or the debtor failing to pay the trustee his legitimate costs within a reasonable delay, the trustee continues to remain in office for an indefinite length of time and it transpires that many non-summary estates are completed long before the summary administration cases are closed.

The CHAIRMAN: Do I understand you to suggest, Mr. Larose, that section 114, that is the present summary administration procedure, contributes little if anything to bankruptcy administration.

Mr. LAROSE: That is my feeling of it. This was introduced in 1949 and proclaimed in 1950, so we have had a few years of experience in dealing with these provisions. My experience down through the years has been that there is no great benefit attached to summary administration provisions. On the contrary there has been an abuse of the act in more ways than one as a result of the introduction of these provisions and that is why we suggest they be deleted. I might say further that this is independent of whether or not orderly payment of debt legislation is enacted. We feel that summary administration as such should be repealed.

The CHAIRMAN: What I was going to point out, and that is why I asked you the first question, I notice that in Ontario in 1961 out of 1,259 filings 651 of those were under the summary administration provisions, and of 651 the major portion of them were in relation to small trade debts. Now, then, if we repeal sections 114 to 116, these people with small trade debts will have to go under the general administration provisions of the Bankruptcy Act.

Mr. LAROSE: Which, I would say, Mr. Chairman, would not entail any great problem. As I pointed out the expense involved is not that much greater and as regards the advantage to them of going under the summary administration provisions I might add this, that despite the fact that notice of an application for discharge of a debtor in a summary procedure is given to the creditors at the very outset it has been found that many, I would say altogether too many of these debtors, do not even appear.

The CHAIRMAN: You mean creditors?

Mr. LAROSE: Debtors. They do not appear in court at the date set for their application for discharge, the case is then adjourned and no further date is set and the application is not proceeded with.

The CHAIRMAN: Now, Mr. Larose, I was in on the consideration of this Bankruptcy Act when it was in the form of a bill in 1949 and my recollection is that the summary administration provisions were urged at that time more for their benefit to the debtor as an expeditious way or a way by short division to get him out of his problems, because they were so small, and take the load off his back. Creditors were not given as much consideration because it was thought in dealing as we were with very small estates there was only a very insignificant amount available for creditors. That was the purpose, as I recall, behind the summary administration provisions, to give the small debtor some simple short form of procedure to get him out of his difficulties.

Mr. LAROSE: May I speak to that, Mr. Chairman. I think the purpose was two-fold and, if I may, I think that the intention really was that the creditors would benefit by the summary administration, because the act was already available to the debtors in another form. The reason I say that is this, that

by reducing, as we hoped, the expense of administration, we anticipated perhaps a little too fondly that the creditors would recover a dividend. In other words, if it costs less to administer the estate there should be something left over for the creditors.

The CHAIRMAN: Just a minute, Mr. Larose. Don't present seriously to us that aspect on dividends, because the limitation in section 26 is that the dollars that he has left over after he has taken care of his secured creditors will not exceed \$500. If it does, the summary administration proceedings are not open to him. So let us not talk about dividends to the creditors, if you are going to divide up the \$500.

Mr. LAROSE: That is correct, but this \$500 limit is placed on the assets at the time the assignment is filled. Under section 39 the property of the bankrupt consists of his assets at the time of the bankruptcy or that may be acquired or devolve on him before his discharge. It is from these earnings that the debtors pay the trustee's costs, or else they get them from a third party, but generally from these earnings. It is our contention that one of the features, one of the benefits of the summary administration has been lost by reason of the fact that the trustee does not take the necessary steps to recover that portion and the debtor does not deposit it with the trustee. With a cheaper administration, it was our view and our hope that if he did so the creditors would receive something from these assets.

Senator HUGESSEN: You mentioned the abuses that have arisen. I think the committee would be interested to hear what those abuses are.

Mr. LAROSE: I pointed to some in considering the clauses dealing with summary administration. The trustee has withdrawn a fee which is quite high. In other words, he has taken advantage of this, as it were, to feather his own nest, and the creditors have not reaped any benefit. If you look at the summary administration statistics, the trustee's remuneration, I would say, is, proportionately speaking, out of balance.

Senator CROLL: But that trustee is licensed by you?

Mr. LAROSE: Yes.

The CHAIRMAN: And section 115 says that in relation to summary administration:

. . . the trustee shall receive such fees and disbursements as may be prescribed.

Mr. LAROSE: The fees come under section 17, and the matter is left to the court, to pass on the trustee's request for a higher fee.

Mr. LUXENBERG: It is given to you for approval.

Mr. LAROSE: Yes.

Mr. LUXENBERG: Do you approve of them?

Mr. LAROSE: No, I do not, and I can confirm that with every letter on file. In the last analysis the court decides whether the trustee will recover the fee. I can say that in 99 per cent of the cases the fee is allowed to stand as requested, and the creditors are the losers once again.

The CHAIRMAN: Now, Mr. Larose—

Senator HUGESSEN: Mr. Chairman, I was asking Mr. Larose about the abuses.

Mr. LAROSE: With your permission, Mr. Chairman?

The CHAIRMAN: Go ahead.

Mr. LAROSE: Apart from that, as I said a moment ago, the trustee does not press the debtor to deposit a portion of his earnings for the benefit of the creditors. In other words, he is merely satisfied to recover his own fees and

costs. The debtor, himself not being pressed by the trustee, will not deposit them with the trustee. Then there is a possible tendency, and one which has been noted, and this is creeping into Ontario by reason of the volume of estates which is gradually increasing from year to year. The province of Quebec has by far the greatest number of summary administration cases, and Ontario is coming along in second place. We have felt that there is a tendency, in view of the actual provisions of the act and the manner in which they are applied—we have felt that there is a possible and very great danger of solicitation on the part of trustees to obtain these estates for the fees they can get out of them.

Senator LEONARD: Are you suggesting that in the 641 cases this year in Ontario the initiative for choosing summary administration rather than the ordinary provisions of the Bankruptcy Act probably comes from the trustee rather than the debtor or creditor, in making that choice as to method?

Mr. LAROSE: No, not initially. Whether or not summary administration applies depends on the stated assets of the debtor.

Senator LEONARD: We are speaking of the 641 who have used this procedure during this last year.

The CHAIRMAN: In Ontario.

Senator LEONARD: Who made the choice in those 641 cases? Did the debtor say, "I want to come under this summary administration procedure rather than the other provisions of the act?" Or did the creditor say, "I want him to come under that"—or the trustee?

Mr. LAROSE: The official receiver decides, based on the value of the debtor's assets; there is no choice, it is mandatory.

The CHAIRMAN: Then where does the solicitation come in?

Mr. LAROSE: It has been represented to us that the trustees approach the debtors directly or indirectly, or they are approached by third parties. It would seem, from the figures, that this is a very grave possibility. To establish the fact is another matter, but we feel it is a fact. Let us say that it is a procedure open to trustees, and is a procedure which would not be as readily available if you had non-summary administration, with an examination of your debtor, with your appointment of inspectors and bonding of trustees.

The CHAIRMAN: Do you mean the principle should be that we legislate to prevent temptation?

Mr. LAROSE: No, but let us remove the causes of temptation.

Senator CROLL: How much temptation can there be under section 17 when the nominal fee is fixed, and it is not to exceed 7½ per cent? What does that mean?

Mr. LAROSE: Section 17(5) says that the court may increase the fee on application, and that is what is done with these summary cases. You will hardly find one in which the fee is fixed at 7½ per cent.

Senator LEONARD: Is the court wrong in doing that?

Mr. LAROSE: I would not like to comment on the court's jurisdiction in such matters.

Senator CROLL: When the trustee starts out he has no idea what the court is likely to do in a given set of circumstances.

Mr. LAROSE: No, but in actual practice the court has seldom questioned the amount of the fee requested by the trustee and it has allowed it at that figure.

The CHAIRMAN: If the man has not the summary administration proceedings open to him and his trade debts, isn't it the same question as to what kind of fees might be allowed?

Mr. LAROSE: That is true, but if he comes under the ordinary provisions of the act there are several protective features in the act at the present time. One is that you have inspectors who can discover whether or not the debtor has other assets which the trustee has not bothered to inquire about, only being satisfied to recover his fees and costs, and you have a proper and adequate examination of the debtor. I think that all in all the creditors have greater protection there.

The CHAIRMAN: There is the suggestion the Board of Trade brief makes on the point of inspectors. It is not that there shall not be inspectors, but there shall be a discretion in the creditors at their first meeting to decide whether they should have inspectors or not.

Mr. LAROSE: Under our non-summary bankruptcy proceedings you have mandatory provisions for inspectors, to protect the interests of the creditors essentially.

Senator KINLEY: Mr. Larose has said something about the abuses. What are the advantages of the act?

The CHAIRMAN: You mean, of the summary administration proceedings?

Senator KINLEY: The advantages of the bill. What does it do for us?

The CHAIRMAN: We had Mr. MacDonald explain that the other day.

Senator KINLEY: But perhaps we could have an explanation from this witness.

Mr. LAROSE: The bill is composed of two parts. One is linked with the question of whether or not the summary administration should be abolished. The other provides for the introduction of the orderly payment of debts legislation.

The purpose of that is to enable the debtor who wishes to come under these provisions to deposit with the Clerk of the Court in accordance with the consolidation order, regularly, and with a view to the ultimate payment in full of his debts. This has a twofold advantage; it has an advantage for the debtor inasmuch as his deposits are made according to his means, and it has an advantage for the creditors inasmuch as they can hope to obtain payment in full, and even if they do not receive payment in full, it is better than nothing, and they should expect to receive something. That has been the experience in corresponding or a similar type of legislation in the United States, that they receive something out of this arrangement. Under the summary provisions at the present time invariably they receive nothing.

The CHAIRMAN: How could you when you have only \$500 to play with?

Senator CROLL: A man who comes under the section and who finds himself in such a position that he has \$500—they are not trade debts, by the way—but he has \$500 which would actually bring him within this section, what are his future earnings likely to be that he can turn over to the trustee?

Mr. LAROSE: To begin with, it is not \$500 debts. That is assets. The liabilities must be \$1000 or more. I might add here that if a trustee can recover from these debtors either a lump sum or over a period of time a certain amount to cover the costs—in the province of Quebec this is covered by the Code—if the trustee were on his toes, he would continue paying as long as he continues in employment.

Senator CROLL: As I gathered, the passing of the Act must have been to give this man some sort of a clean slate at an early date, and to enable him to forget about the whole business and not keep him perpetually in debt. It seems the loss would not be very high to each creditor if he gets rid of it and starts over again.

Mr. LAROSE: The Act provides that it is possible to do that. It is left to the discretion of the court. If the debtor does not appear on his application, and that happens in many, many instances—you would be amazed at how many times it happens—and that is one of the main purposes in any bankruptcy legislation—he has resorted to the Bankruptcy Act and he has failed to follow the matter through and obtain a discharge. As I said, the debtor in altogether too many instances, although he has availed himself of the Bankruptcy Act, will make an assignment under the summary administration provisions but will not proceed with his application for his discharge. He may appear before the court subsequently, but unless he does the court has not passed upon the validity of his assignment.

The CHAIRMAN: He does not get a discharge or he may not get a discharge if the court is not satisfied that he is entitled to it.

Mr. LAROSE: That is correct.

The CHAIRMAN: One of the bases for entitlement is if he has no more realizable assets.

Mr. LAROSE: That is correct, but in that connection when some of these debtors do appear before the court and the court discovers that all that has been done is to pay the trustee's costs, and it is not always in full, the court now is beginning to take a different approach to the problem, and can either suspend the discharge or impose conditions in order to overcome this abuse.

The CHAIRMAN: That is open to the court?

Senator WILLIS: Why cannot the court relieve him from the trustees or their fees?

The WITNESS: Under the Act the court can.

Senator WILLIS: You are attacking the judges of the court?

Mr. LAROSE: I say this—I am not criticizing the courts—far be it from me to do so—but I am saying, in fact, the remuneration of the trustees is out of proportion to the recovery with the result that the creditors are the losers.

Senator CROLL: But the court, when the trustee appears and says there has been a considerable amount of work, pages and pages of phone calls, letters, and the like, can fix a fee. It may be a lot of work for a small estate.

The CHAIRMAN: As far as assets in hand are concerned, you are dealing with not more than \$500.

Senator ASELTINE: I am not convinced Part X does not fully take care of what is contained in sections 114, 115 and 116.

The CHAIRMAN: With all respect, Part X does not take care of trade debts, and yet we have been told in the brief submitted this morning that out of 641 applications in 1962 in Ontario, the substantial proportion of them were trade debts under summary administration, which would mean you were dealing with a position where the realizable assets would not exceed \$500. That is excluded from Part X. So you are going to throw this man, if he wants to take the hump off his back, you are throwing him under the general provisions of the bankruptcy law.

Senator DROUIN: Out of this 641 small trade creditors—debtors—in Ontario last year, how many actually got their discharge?

The CHAIRMAN: We haven't that information. The information we have is that 641 proceeded under summary administration provisions so far this year in Ontario, and that a substantial proportion of those were in respect of trade debts.

Mr. LUXENBERG: May I say this, that it is an exception to the rule that a person does not appear on his application for discharge, in Ontario, anyway.

Mr. LAROSE: I am looking at the over-all picture, and I would say it is the opposite from the over-all picture.

Senator KINLEY: I would like to find out what the advantages are in this bill to an industrialist, and to a man who is my debtor, what mutual benefit there is. The ceiling of the bill is \$1,000. We realize there may be more. Now the question is if a man makes an application to the Clerk of the Court and he makes a consolidation order, what protection has that debtor got against his secured life amount, or mortgage on his goods and chattels, or on his home? Are those stalled for the time being during the three years, or can they go on and demand—what is the protection?

Mr. LAROSE: Well, the secured creditors are not affected whether it is under the orderly payment of debts legislation or under the Bankruptcy Act. In other words, the rights of the secured creditors are not interfered with.

Senator KINLEY: Does not that destroy the value of what is in the pot, so to speak, when they come to get an execution?

Mr. LAROSE: As I say, even under the Bankruptcy Act the debtor is not protected from the secured creditors. The rights of the secured creditors are not diminished in any way, shape or form. The only specific aspect of the Bankruptcy Act touching on that is that which gives the trustee an opportunity of dealing with the security where there is an equity. The interests of the debtor are not protected.

Senator KINLEY: Do the interests of the debtor's home and family stand against—

Mr. LAROSE: No more than under the Bankruptcy Act, but in both cases you have your provincial exemptions.

Senator DROUIN: Mr. Larose, perhaps this question was answered this morning—I know it was not answered by you the last time—but do you or your department see any serious objection to maintaining subsection (6) of section 26, and also sections 114 and 116 of the act together with Part X. In other words, why not pass the act with Part X and not repeal these sections. Would that create confusion, or do you think—

Mr. LAROSE: Not necessarily confusion but I think that section 26(6) and sections 114 and 116 have not worked out in practice. They have been abused, and I think they should be abolished.

Senator DROUIN: They have been abused in what way?

Mr. LAROSE: As I have said, they have been abused both by the debtor and the trustee, and the person who suffers in both cases is, as always, the creditor. The trustee has not realized upon all of the possible realizable assets of the debtor. The debtor has not deposited those assets with the trustee, and consequently the creditors have recovered very little from such estates.

Senator LEONARD: Senator Drouin's question leads up to mine, Mr. Chairman. Mr. Larose says that the summary provisions have been abused by the debtor and by the trustee, and that the result has been that creditors have not received what they should have received. But, here we have the Toronto Board of Trade—and I imagine there are some creditors among the membership of the Toronto Board of Trade—requesting that these provisions stay. Would they be taking that view if it was in the interest of the creditors to have these sections repealed? Is not that a very powerful argument for their retention?

Mr. LAROSE: I would be inclined to agree with that objection, but I might say this, that to my knowledge the volume of summaries in Ontario has only just begun to increase appreciably within recent times, whereas it has always been a very substantial element elsewhere. I am looking at the overall picture, and I have seen a very sad end result in these other cases.

Senator HUGESSEN: Mr. Larose, I gather that your objection on the ground of abuses is that the trustee is tempted in these cases to provide just for his own fees. In other words, his own fee is provided for, and he does not trouble to collect whatever assets there may be on behalf of the creditors. The reason for that, I suppose, is the absence of inspectors.

Mr. LAROSE: In part, yes.

Senator HUGESSEN: The Toronto Board of Trade suggests not that these sections be eliminated but that they be amended to permit the appointment of inspectors if the creditors at the first meeting so decide. Would not that prevent the abuses that you have been talking about?

Mr. LAROSE: Possibly, in part. In the first place we have already provision in the act for inspectors in the case of non-summary bankruptcies.

Senator HUGESSEN: I know.

Mr. LAROSE: Secondly, in these small estates the experience has been that in many instances the creditors themselves are disinterested. They neglect to attend these meetings, or they attend in very small numbers. There is no assurance in any event that inspectors would be appointed.

The CHAIRMAN: If the creditors are not interested then who are we trying to protect?

Senator CROLL: Mr. Larose, in the explanatory note to clause 3 you say:

The purpose of this amendment (that referring to Part X) is to enact, as part of the Bankruptcy Act, provisions relating to the orderly payment of debts. Similar provisions are contained in the legislation of certain provinces but have recently been declared by the Supreme Court of Canada to be *ultra vires* of the provincial legislature.

That is referring to Alberta and Manitoba?

Mr. LAROSE: That is correct.

Senator CROLL: I appreciate that you have got to do something about that, and no one wants to stop you, but suppose Ontario does not come under the act? Where are you then?

Mr. LAROSE: They would still be under the Bankruptcy Act, under the ordinary provisions.

Senator CROLL: But suppose you left the summary provisions there for them, and they can take their choice of coming under one or the other?

Senator DROUIN: That is the way I see it.

The CHAIRMAN: Yes, that is the way it should be.

Senator CROLL: I know you have got to do something about these provinces, and no one is going to stop you, but where the thing is working out well—after all, these knowledgeable people say it is working well—what difference does it make?

Senator McCUTCHEON: Mr. Larose is thinking of abuses elsewhere than in Ontario, I suspect, and he is being very cautious about it.

Senator CROLL: Is that right?

Mr. LAROSE: Yes, that is correct.

The CHAIRMAN: But we do not legislate amendments mainly because of abuses, do we?

Mr. LAROSE: Well, with respect, Mr. Chairman, I would say we attempt in so far as possible to overcome abuses based upon the act itself, and to block any loopholes.

The CHAIRMAN: Are there any other questions of Mr. Larose?

Senator GOBIN: This would be just a remark, Mr. Chairman. It seems that by section 198 the act will come into force only at the request of the

lieutenant governor in council of the province. Suppose, for instance, that Quebec decides there will be no such proclamation then we will not have these summary administration provisions. It might be a rather serious situation.

The CHAIRMAN: This bill repeals the summary administration provisions.

Senator CROLL: But if sections 114, 115 and 116 go by the board when this bill is passed then what Senator Gouin says is quite right. They will have nothing.

The CHAIRMAN: They then come under the general provisions of the Bankruptcy Act if they are trade debtors. There is no other place to which they can go.

Senator CROLL: Then we will have taken away some rights that small people have.

The CHAIRMAN: If there are no more questions—

Senator KINLEY: Paragraph (8) of the Board of Trade's brief says:

Part X, orderly payment of debts, does not cover debts due to Governments. In the case of business insolvencies or bankruptcies, there is frequently nothing left for creditors after tax claims have been satisfied.

Have you ever heard of a case where they do not come first? The reason I ask the question of the superintendent is that this does not exclude anything. I thought it might exclude those under \$1,000, and that sort of thing, but it appears from the bill that it does not. I cannot see the significance of that statement.

The CHAIRMAN: It is subsection 2 of section 174 on page 2 of the bill. There are certain exclusions there, and one of them is a debt due, owing or payable to Her Majesty in right of Canada or a province.

Senator KINLEY: Why is that one picked out when there are so many others? What is intended to be pointed out to us by this?

The CHAIRMAN: There are more than that. There are debts owing to a municipality, for instance.

Senator KINLEY: But having regard to the way it was presented to us in the brief I thought that it had some significance.

Senator McCUTCHEON: This is to enable Manitoba and Alberta to have the legislation they want. If you go down to subsection (3) of section 174 you will see that there are types of exemptions set out for Alberta which are different from those for Manitoba. This is to enable those two provinces to carry on in the way they have been carrying on, and the other provinces can adopt the other provisions if they wish.

The CHAIRMAN: Not for modification by another province, but for modification by regulations; and the regulations are to be made by the Governor in Council.

Senator McCUTCHEON: They are to be made after listening to the views of the province in the matter.

The CHAIRMAN: In regard to modification of Part X, I do not understand that there is an argument against providing for Part X.

Senator McCUTCHEON: I do not think we need argue about Part X. I think the argument is on the earlier parts.

The CHAIRMAN: Whether we should include or strike off some of the administration provisions.

Senator DROUIN: The main object of the bill is to put forth for adoption the provisions of Part X, but does the Superintendent of Bankruptcy see any

serious objections to maintaining the summary administration provisions of the act?

Mr. LAROSE: I would say very definitely my feeling is that the summary administration provisions of the act should be abolished.

The CHAIRMAN: Thank you, Mr. Laroze.

We have representatives here now from the Credit Grantors Association of Canada. They have submitted a brief which is being distributed. Those appearing in support of it are M. François Lacroix of Three Rivers, the president of the association; Mr. Rene Helan, director; and Mr. R. W. Stevens, of Toronto, who is counsel to the association. Mr. Stevens will read the brief.

Mr. R. W. Stevens, Counsel to the Credit Grantors Association of Canada:
Mr. Chairman, honourable members of the Committee.

The comments on Bill S-2 of the current session of the Senate entitled "An Act to amend the Bankruptcy Act" (hereinafter called the Bill) have been prepared by the Credit Grantors Association of Canada (hereinafter called the Association).

The Association has in excess of 4,000 members and is divided into 133 separate credit units which are located in every major urban area in Canada. The membership composed of:

- Chartered banks
- Consumer loan companies
- Fuel companies
- National department stores
- Petroleum companies
- Retail stores
- Sales finance companies

The Association's comments and recommendations respecting the Bill are few in number and are in the main restricted to that Part of the Bill entitled "Orderly Payment of Debts." Before dealing with these specific items the Association wishes to express its satisfaction over the proposed removal of the sections of the Bankruptcy Act dealing with summary administrations. Annexed hereto as Schedule "A" is a copy of the brief submitted by the Association to the Minister of Justice in 1960 which serves to point up the abuses that have arisen under the Bankruptcy Act since its proclamation in 1949 by virtue of the unscrupulous activities of certain trustees licensed under the Bankruptcy Act which we believe are directly attributable to the existence of the summary administration provisions.

One of the honourable members of this Committee questioned the plight of a debtor in a jurisdiction that did not adopt the Orderly Payment of Debts part of the Bill after the summary administration sections of the Bankruptcy Act are repealed. We believe the answer to this inquiry is that any province that has no comparable legislation will immediately exercise its rights under Section 198 of the Bill, and those that have comparable legislation (such as Ontario: The Division Courts Act; Quebec: the Lacombe provisions of the Code of Civil Procedure; Newfoundland: The Judgment Debts (Instalments) Act 1962) already have adequate provision for the orderly arrangements of a debtor's affairs. You will also note from the information set forth in Schedule "A" that the two jurisdictions having substantially all of the personal bankruptcies in Canada (Quebec and Ontario) also have legislation comparable to the Bill. This is not a complete answer to the honourable member's expression of concern, but we believe that the remainder of the provinces will elect to have this legislation proclaimed.

I turn to Part X, Orderly Payment of Debts, Notice of Consolidation Order, Section 176.

It is, in the opinion of the Association, essential that public notice of the application for a consolidation order by a debtor be given immediately after the making of the application, otherwise a credit grantor acting in good faith could advance credit to a debtor named in an order. We recommend that notice of the order be published in the Provincial Gazette and in a local newspaper, the cost of which will be paid out of the funds deposited with the clerk. In any event, we recommend the language of this section be amended to provide that the register referred to in subsection (1)(a) is a separate register which will be open for inspection by the public at all times when the office of the clerk is open.

Effectiveness of Order, Sections 176, 185:

Once a consolidation order issues then by Section 185 of the Bill no creditor can bring any action against the debtor in any court of the province in which the debtor resides except as permitted by the Bill. If the entry on the register referred to in Section 176 is the only notice given a creditor of a consolidation order, then it is recommended that the operation of Section 185 be restricted to the county or the district where the order is on record or any other county or district in which a copy of the order is filed. As an alternative to this procedure, it might be advisable to have a central registry for each province in addition to the county or district registry.

I pause there to direct the committee's attention to the fact that this is the type of procedure with respect to the consolidation order in each county that prevails under the Division Courts Act of the province of Ontario at the present time.

Terms of Order, Sections 176, 182:

It has been the experience of members of the Association that when substantial discretion is afforded clerks of courts and even judges of courts in creditor/debtor proceedings after judgment, the discretion is generally exercised in favour of the debtor. However, when the judge or the clerk, as the case may be, is obliged to deal with hundreds of applications for consolidation orders each week, such exercise of discretionary powers *per se* can inadvertently prejudice the creditor's position. We therefore recommend that, as in the case of the Quebec Lacombe legislation, the debtor be compelled to make regular payments of a minimum percentage of his earnings to the clerk for distribution. The preponderance of provincial legislation limits attachment proceedings to 30% of the debtor's wages. The Lacombe law in its present form has been in effect to the satisfaction of all interested parties for three years and provides for an unseizable portion of a debtor's salary equivalent to \$12 (per week) in the case of unmarried persons and \$24 (per week) in the case of married persons. Of the residue 30% is available for distribution ratably amongst creditors. We believe this schedule should be inserted as the minimum requirement to be contributed by the debtor under a consolidation order in all cases.

Notice to Creditors Secs. 177(3) 187(1):

Section 177(3) of the Bill requires the clerk to give notice of the time for hearing of an objection to the clerk's order, but such notice is confined to the debtor, the objecting creditor and any creditor whose claim is being objected to. In Section 187(1), where a creditor is added to a consolidation order the clerk is required to give notice only to the debtor and the creditor being added. In each of these instances it is recommended that the notice referred to be given to all creditors named in the register, as each one of them will be affected by any decision.

The CHAIRMAN: Yes. The larger the list, the smaller the division of the assets.

Dispute of a creditor's claim Sec. 187 (1) (2):

By virtue of this section, the right to dispute the addition of any claim to which the Bill applies which is not entered in the order is restricted to the debtor. It follows from the preceding comment that every creditor named in the order should also have the opportunity, either with or without the debtor, of disputing the addition to the order of any unregistered creditor.

Default under the Order Sec. 189:

This section is comparable to the corresponding section of Bill 45 of the 5th Session (1959) of the Alberta Legislature which was entitled "A Bill to Provide for the Orderly Payment of Debts". A copy of the Alberta bill is annexed as Schedule "B". It is recommended that the discretion of the judge to rescind the order on the happening of any of the events referred to in subsection (1) be eliminated and that such rescission be automatic, thereby placing each creditor in the same position at the same point of time. This is the principle of both the Quebec and Ontario legislation, and it is respectfully submitted that it should be incorporated in the Bill.

Secs. 189 and 193:

All creditors of the debtor are allowed to participate in the consolidation order; however, only those with claims of under \$1,000 are compelled to. It has been the experience of the members of the Association in the Provinces of Ontario and Quebec that upon occasion a debtor will incur substantial debts and then apply for a consolidation order under The Division Courts Act of Ontario or file a declaration under the Lacombe provision of the Code of Civil Procedure. The protection of these statutes is then afforded the debtor, during which time he makes payments to the clerk. Before the clerk has made any distribution to the named creditors, however, the debtor of his own volition, or after being solicited by an unscrupulous trustee, makes an assignment in bankruptcy, at which time the clerk is obliged to pay to the Trustee the amounts received by him for distribution to the creditors named in the order. The persistent continuance of these practices has led the Association to make the following recommendations:

(1) Where a consolidation order is current and the debtor not in default thereunder, the registered creditors should be precluded from filing a petition in bankruptcy against the debtor and the debtor should be precluded from making any assignment in bankruptcy.

(2) In the event the debtor goes bankrupt after the date of the consolidation order and the clerk of the court still holds funds for the benefit of registered creditors, such funds should be distributed to the registered creditors pro rata, now being credited to the trustee.

Secured creditors Sec. 188:

This section provides a secured creditor having a claim of less than \$1,000 with the right to retain his security and still rank as a creditor under the consolidation order. This, it is submitted, is contrary to the equitable principles of the Bankruptcy Act. A secured creditor should be obliged immediately on the issuing of a consolidation order to:

(1) realize his security and prove in the consolidation order for any deficiency if permitted by provincial law:

And I expressly refer to the limitations imposed by the Alberta and the Saskatchewan laws in conditional sale contracts and repossession.

- (2) repossess or seize his security if the debtor is in default, retain the security and be precluded from any claim under the consolidation order; or
- (3) surrender the security to the sheriff of the county in which the debtor resides for judicial sale, with the proceeds from such sale being paid to the clerk for distribution under the consolidation order, and then file for the full amount of his claim under the consolidation order.

Senator CROLL: Had these suggestions been made to Mr. Larose previous to your presentation here today?

Mr. STEVENS: No, they had not, senator. This is the first time they have been made public.

Senator McCUTCHEON: You are referring to the suggestions with regard to Part X?

Senator CROLL: Yes.

Mr. STEVENS: The brief annexed as section A was submitted to the Minister of Justice.

The CHAIRMAN: Any questions to be asked of Mr. Stevens?

Senator ISNOR: I take it you have branches in all provinces right across Canada?

Mr. STEVENS: Yes, sir.

Senator ISNOR: Do you believe that this bill should apply in uniform form to all provinces alike?

Mr. STEVENS: I do not believe that is a practical problem senator. I think that with the enactment of this legislation in satisfactory form a provincial legislature will be obliged to consider why they should not request the Government of Canada to proclaim it for their province.

Senator McCUTCHEON: What has been the experience of your members operating under the Manitoba bill?

Mr. STEVENS: It has been very limited. They are, as we pointed out in the brief, enthusiastic about the operation of the Lacombe legislation. It has worked out extremely well, but we submit that the bankruptcy legislation as evidenced by Parts I to IX, and the orderly payment of debts legislation as evidenced by Part X as now contemplated, should be mutually exclusive, there should not be the interchangeability whereby the individual who he still comes under his consolidation order and is capable of making the payments and avoiding the stigma of bankruptcy then because of prompting through trustees should make a voluntary assignment.

Senator McCUTCHEON: Well, even if you did not have such provisions in the Bankruptcy Act, you feel to a large extent that end would be accomplished by the repeal of sections 114 to 116 of the act?

Mr. STEVENS: To a degree, yes.

The CHAIRMAN: Not the part that Mr. Stevens has been talking about; that is, you assume Part X is in operation, you assume a consolidation order has been made. Then what he says is that a debtor who is in good standing with his registered creditors, making payments, is sometimes influenced to go over to the general provisions of the bankruptcy law. It does not necessarily follow that those are all cases where the summary administration provisions of the Bankruptcy Act would apply. They may be in excess of that.

Senator McCUTCHEON: I agree. But there is a suggestion in the brief that the operation of the Lacombe Law in the province of Quebec is regarded by his clients as being very efficient. The other suggestion is that people will not escape into bankruptcy nearly as frequently as they do if the summary administration provisions are repealed.

Mr. STEVENS: That is perfectly correct, but I would go one step further. I would say that it is the opinion of this association that even if the orderly payments of debts part of the bill is not enacted, that we feel very strongly in favour of the repeal of section 26 (6) and 114 to 116 of the Bankruptcy Act. I am not in a position to particularize with respect to the abuses but they most certainly do exist and I would not want to designate which area they are in.

The CHAIRMAN: Abuses in realization of realizable assets not in excess of \$500?

Mr. STEVENS: The summary administration provisions.

The CHAIRMAN: \$500 is the ceiling on that, is it not, and under section 26 (6) the debtor cannot have realizable assets in excess of \$500 after taking care of his secured debts.

Senator McCUTCHEON: But has not the complaint been that presumably the Lacombe law and the orderly payment of debts in the circumstances in which they apply take care of that, that a portion of the debtor's future earnings are paid into the trustee and accrue to his creditors, and that should be the case under the bankruptcy law. As I understand, where the realizable assets are \$500 the trustee is satisfied to take care of his costs and his fees and get a discharge where he can and not worry about the future earnings.

The CHAIRMAN: All those things are possible under the present provisions of the bankruptcy law. The court can refuse a discharge and impose conditions. So the machinery is there now.

Senator LEONARD: On page 4 of the brief that this association submitted, in connection with the 1949 Bankruptcy Act, the second paragraph seems to me to set out their objections to sections 114-116. I read:

Yet an ever present factor contributing to the excessive number of these Summary Administration Bankruptcies, is the fact that such debtors have, in the past, been the subject of solicitation, both direct and indirect, by trustees in the Province of Quebec, who, for a fee in the neighbourhood of \$300.00, agree to provide the debtor with a discharge from his obligation to pay his just debts. Admittedly, such debtors are not entitled to such discharge, but, in practice, they generally obtain it because creditors are unwilling to defray the disproportionate costs of contestation, or pursuit, or enforcement of their rights under the Bankruptcy Act.

Is that your case against section 114-116 of the Bankruptcy Act, Mr. Stevens?

Mr. STEVENS: Basically, Senator Leonard, yes.

Senator LEONARD: Would the appointment of inspectors as suggested in the Board of Trade brief meet that?

Mr. STEVENS: I think, to some extent, it would. However, the inspectors would only be appointed at the first meeting of creditors. If there is to be an illegal liaison established between a debtor and the trustee it will have been established prior to the first meeting of creditors.

The CHAIRMAN: The trustee is an officer of the court, is he not?

Mr. STEVENS: I believe he is.

The CHAIRMAN: That is quite an allegation we are making against a group of people who are licensed.

Mr. STEVENS: I believe Mr. Larose can establish that there have been a number of trustees whose licences have been suspended for these practices.

The CHAIRMAN: That is right. So we must assume that the ones who are operating carry the approval of the proper authority, otherwise they would not have licences. What bothers me is that there is an allegation in general terms against trustees, because there are trustees I have met from time to time who are all honourable people and they would not connive with the debtor. Now, there may be some who will but you have that any place.

Senator KINLEY: Mr. Chairman, I must have misunderstood some of the speeches that were made in the house. I thought the trustee was open to attack.

The CHAIRMAN: Some trustees. I am talking generally about attacking trustees.

Senator KINLEY: Some would make it a question.

The CHAIRMAN: But if there are inspectors at least a curb is put on the roving of these trustees who do not regard their duties sincerely.

Senator KINLEY: The Superintendent of Bankruptcy rather intimated they were open to inquiry.

The CHAIRMAN: But at the end of the road the judge is the one who grants a discharge and he can impose conditions.

Senator KINLEY: This witness said that judges are generally in favour of the debtor.

Senator LEONARD: Mr. Chairman, are there any statistics available covering the province of Quebec similar to those that we have for Ontario as to the number of applications under the summary provisions of the act?

Mr. STEVENS: If you look on page 2 of the Schedule, half way down the page, these are records pertaining to wage earner bankruptcies, not to be confused with trade accounts.

Senator ISNOR: Those are the cases that your association would be dealing with more particularly, these wage earner bankruptcies?

Mr. STEVENS: Well, I cannot answer that affirmatively. When you look at the membership of our association you will appreciate that—

Senator ISNOR: I was coming to that in a moment.

Mr. STEVENS: I would say the preponderance of our concern is directed towards the wage earner bankruptcy.

Senator ISNOR: I see, Mr. Stevens, that you have 4,000 members in your association, located all across Canada. Mr. Larose made reference to a number of cases, 641, which were not given a clearance. Do you advise your members concerning those who are not cleared, because of future credit granting? Is my question clear to you? Do you advise your members throughout Canada as to the bankruptcies which are not being cleared?

Mr. STEVENS: There are services available which disclose if an individual is bankrupt and also if he has obtained his discharge.

Senator ISNOR: "Discharge"—that is the term I wanted.

The CHAIRMAN: I thought you were asking if there was a list rating of the credit of various persons.

Mr. STEVENS: In reply to Senator Isnor: No, there is not, as far as the association is concerned.

Senator ISNOR: I see. You have no list to which your members can refer to see whether "A", "B" or "C" has been declared discharged?

Senator CROLL: What good is that information to you at head office if it does not filter down to your members?

Senator ISNOR: That is the point, yes.

Mr. STEVENS: It could be accumulated for different urban areas. As we pointed out, there are 133 units, and each unit is a separate entity in itself for the purpose of disseminating information to its members.

Senator CROLL: So the information is disseminated?

Mr. STEVENS: Within the unit.

Senator CROLL: What difference does it make? You have it for each region, each unit.

Mr. STEVENS: The discharge is not declared, in any event.

Senator CROLL: If a man is not discharged the information comes to the unit; if a man becomes a bankrupt. But if he is discharged the information does not come to the unit?

Mr. STEVENS: That is correct.

The CHAIRMAN: I gathered, in a request made in the brief, that there should be a register where an application for a consolidation order is recorded, the purpose being the information is collected and made available for those involved in the business of credit granting. Surely that must be the purpose of it?

Senator ISNOR: I should think that is the purpose of your association. Dunn's publish a statement every week showing the bankruptcies in certain districts in different provinces. I thought you were doing the same thing for your members.

Senator McCUTCHEON: Most of his members subscribe to Dunn's.

Senator DROUIN: You referred to the province of Quebec. Did I understand you well, that this is what you said, that there were abuses, and that in the province of Quebec with respect to the Lacombe law, when a debtor has deposited for a period of time a seizable portion of his salary, and say that an amount of \$300 or \$400 is accumulated for distribution amongst the creditors who have filed their claims under this law, that the abuse you point to by the trustees in the province of Quebec is that they induce the debtor to avail himself of the Bankruptcy Act before its distribution by the clerk under the Lacombe law, and that the accumulated amount becomes part of the assets of this bankruptcy?

Mr. STEVENS: That is correct. But also the bill in its present form contemplates the same payment from the clerk to the trustee in bankruptcy.

Senator DROUIN: We have top lawyers from Quebec here—Senators Hugessen, Vien and Gouin—and I think I will be supported by them. I am wondering if there is a point of law here. If the debtor has deposited with the clerk, under the Lacombe law, a certain amount, does not it belong from that very moment to the creditors who have filed their claims under the Lacombe law, and that amount that is accumulated for distribution does not form part of the assets of the debtor when he goes bankrupt?

Senator GOBIN: I do not know of anything to that effect. The amounts are deposited and are sent to the clerk, and when there is a sufficient amount there is a distribution among the creditors. Of course, we all realize there is no discharge to be obtained by the debtor who is under the Lacombe act; and we realize also it protects only his salary and not his other assets, and the money that is in the bank or any chattel which could not be claimed on. It applies only when he deposits a seizable part of his salary.

The CHAIRMAN: I gathered the neat question that Senator Drouin was putting was if you have a case coming under the Lacombe law and the man has deposited a seizable part of his money, what is the position with regard to the money deposited under the Lacombe act in relation to the clerk who is administering the consolidation order? Are they not two separate things,

and the moneys deposited under the Lacombe law must not be deposited to the credit of the creditors?

Mr. STEVENS: I think there is a basic constitutional problem there, as far as that amount is concerned.

The CHAIRMAN: I want to point out to the members of the committee—

Senator DROUIN: Mr. Chairman, if I may, under section 697h of the Code of Civil Procedure of the province of Quebec you may find the answer. It states:

The sums deposited by the garnishee under article 697 or by the debtor under articles 697a and 697b become, upon being deposited, the property of the creditors collocated at the time of the next distribution and the clerk of the court where such sums are deposited must, every three months, determine summarily, rateably and without costs, the amount coming to each such creditor and cause such amount to be sent to each of them to his last known address, unless the creditor or another person authorized by him claims it in person at the office of the clerk within fifteen days of the distribution.

This section would indicate that the moment an amount is deposited it belongs to the creditors collocated at the time of the next distribution, but cannot, in a subsequent order in bankruptcy, become part of the assets of the bankrupt.

The CHAIRMAN: I should point out that the question Senator Drouin has raised raises a question of wages. Under section 174 of this proposed bill a claim for wages can only come into the purview of the consolidation order on the consent of the creditors. Otherwise in Alberta and Manitoba it is specifically provided that claims for wages are heard separately under the provincial statutes. In the case of any other province it is any debt of a class designated by the regulations to be one to which this part does not apply. In this brief we are hearing about wage earners and the alleged frauds they practice. I do not know just how it works.

Senator KINLEY: Have not they a provision in Alberta and Manitoba to deal with mechanics' liens?

Mr. STEVENS: I submit, Mr. Chairman, that the section you are referring to deals with the claim of a creditor for wages from the debtor, and not the claim by the debtor for wages.

The CHAIRMAN: That is right.

Mr. STEVENS: With respect to Senator Drouin's point, Mr. Chairman, may I refer to section 193?

The CHAIRMAN: Yes.

Mr. STEVENS: Subsection 1.

Senator DROUIN: Of the proposed bill?

Mr. STEVENS: Yes, of the proposed bill.

...any moneys that have been paid into court pursuant to such consolidation order shall forthwith be paid over by the clerk to the trustee acting in respect of the bankruptcy or the proposal, or to the official receiver if performing the duties of such trustee.

Senator McCUTCHEON: That would not apply to the Lacombe law?

Mr. STEVENS: No.

Senator LEONARD: What Mr. Stevens would like is the principle of the Lacombe law in this bill.

Mr. STEVENS: Yes. I am taken by surprise by what Senator Drouin said, in that I am not a Quebec lawyer and I cannot give an opinion on it, but I

have been advised it is, in fact, the practice of those in Quebec administering the Lacombe legislation to make the payment of the undistributed portion of the funds on hand to a trustee in bankruptcy.

Senator VIEN: Wouldn't the Bankruptcy Act overrule, if it were applied, other provincial statutes in matters of this kind? In other words, if a creditor or creditors did apply for an assignment in bankruptcy in Quebec, I don't believe that the Registrar of the Court could resist the request that the moneys that belong to the debtor, that have been deposited, could be retained for the listed creditors under the Lacombe law. I think the Bankruptcy Act overrides the provincial legislation unless the Bankruptcy Act makes provisions to the contrary. I would feel that it would be advantageous for all concerned that the Ontario legislation and the Quebec Lacombe law should continue to operate even if there were an application in bankruptcy, but that is a matter for consideration. But presently I would be very much surprised that the Registrar under the Lacombe law could resist an application of the trustee for a remittance of funds.

The CHAIRMAN: Senator, there are two points there really. The first point is with respect to the money that has accumulated before the bankruptcy occurred. Now there is no question about seizable assets of the bankrupt. They would come under the Act, obviously, but what has accumulated otherwise, the Lacombe law would say that before the money is deposited it belongs to and is the property of the creditors and is no longer the property of the debtor. He has no rights in respect of that.

Senator VIEN: Even with respect to that part there is a question of equitable distribution of assets among the creditors, and if the debtor has given some privileged payments, whether it is under the Lacombe law, to listed creditors, the fundamental principle would be that everything should come into the same melting pot for distribution to all creditors.

The CHAIRMAN: There may be that question.

Senator LEONARD: However, Mr. Chairman we are not faced with that constitutional question, because here we are dealing with two pieces of federal legislation. Under bankruptcy law the whole question is whether the Lacombe law, allocating these assets to the creditor should be carried in section 193 and be kept out of the consolidation order rather than go to a trustee in bankruptcy subsequent to an assignment. I think that is the point.

Senator HUGESSEN: I think from a practical point of view that instance is not likely to arise, because I don't think the province of Quebec with the Lacombe law, which is working adequately, will bring itself under this Part X. So, I think we are considering something that is not likely to happen.

Senator LEONARD: Regardless of that, there is just a question of whether or not if we pass this, and a consolidation order is made, and then under section 193 an assignment comes subsequently; that is your point, is it not, Mr. Stevens?

Mr. STEVENS: Yes.

Senator LEONARD: Then you say section 193 should be amended so that the assignment will not cover moneys already paid for the benefit of creditors under the consolidation order.

Senator VIEN: But in view of the practice referred to in Quebec under the Lacombe law to the effect that the Registrar of the Court does pay upon request, I think that the Lacombe law should be excluded; not only the consolidation order, but the Lacombe law should also be excluded so that these two pieces of provincial legislation would be treated in the same way.

Mr. STEVENS: This would be a general section outside the Orderly Payments of Debts part of the bill.

The CHAIRMAN: It would be an exclusion.

Senator LEONARD: If section 193 is amended to provide that the consolidation order payment shall stay under the consolidation order, the section should also be amended to make a similar provision with respect to any payment under a similar provincial act which provides for orderly payments to or for the benefit of creditors, such as the Lacombe act of the province of Quebec.

Mr. STEVENS: This will only apply if the province we are dealing with elects to have Part X.

Senator CROLL: If we adopt the Act we are getting no closer to uniformity than we did before. We have the Lacombe law in Quebec. We in Ontario have been working under the summary provisions act. Except we repeal section 114 that would mean the province of Ontario would be at some disadvantage.

The CHAIRMAN: That is right. Of course Mr. Stevens doesn't look at it in that way. Any other questions of Mr. Stevens?

Was there anything you wanted to ask Mr. Stevens, Mr. MacDonald?

Mr. MACDONALD: No, thank you, Mr. Chairman. I don't think it would be possible for Mr. Larose or myself to do justice to the obviously careful submission or to undertake to comment on it at the present time, outside perhaps of one very general comment to the effect that one principle of Part X was really to keep the machinery as simple as possible, on the basis that an arrangement under Part X would be arrived at between the creditors and the debtors when there was a considerable measure of trust between them. It is of course possible to add safeguards to Part X, but to the extent that you add safeguards the machinery is becoming more complicated instead of simpler, and in that sense you get away from the original purpose of the Part. The ultimate control of Part X is that it is still open to any creditor to invoke the ordinary provisions of the Bankruptcy Act. If the arrangement was not working out and the debtor was not carrying out his obligations, and the creditors were not satisfied he was doing an honest job to pay off his debts, they could still petition him into bankruptcy if he was otherwise amenable to such action.

The CHAIRMAN: Are there any other persons here?

Senator CROLL: Mr. Chairman, are there any other briefs?

The CHAIRMAN: I want to find out if there are any other people here who wish to make presentations. There has been a single page communication from *The Canadian Collector* which is published by the Canadian Collectors Association of Toronto, and I am going to distribute copies of this. I now ask whether there are any other persons here who came here with the object of making a presentation. If there are such persons present now is the time to come forward.

Senator CROLL: Did the Canadian Credit Mens Trust Association Limited intimate they wished to be present?

Mr. LUXENBERG: I should say, Mr. Chairman, that they support our brief. One of their managers is on our committee.

Senator CROLL: Will this brief of the Credit Grantors Association of Canada be in the record *in toto* with the exhibits?

The CHAIRMAN: The schedule was not read, but is it the wish of the committee that the brief with its schedules be incorporated?

Hon. SENATORS: Agreed.

(For full text of brief of Credit Grantors Association of Canada, with Schedule "A" and attached documents, see appendix, p. 57)

The CHAIRMAN: I have a submission here which is very short. It is from The Canadian Collector of Toronto. It reads as follows:

May we make a submission on above Bill, which has now passed two readings in the Senate and will come before your Committee?

The intent of the Bill seems to be to obtain the consent of Parliament for an orderly payment of debts plan on a national basis, and with token administration by each province as same is approved, whereby persons owing many small debts can pay them off by instalments as able. But at the same time be restrained from creating further debt. And with the power to be vested in the clerk of a court, from which a consolidation order has been issued, to obtain from the debtor an assignment of property and this to include wages or salary due or to be due as an earnest by the said debtor for cooperation where needed.

With this we have no complaint. And hope the Bill will be passed by both Senate and Parliament.

We wish to make one submission. *Section 178. Adding additional creditors;*

I would draw the attention of the Committee that creditors are not of necessity limited to persons residing or doing business in town or the province where a judgement debtor applies for a consolidation order. And for this reason I respectfully draw attention to the provisions of a law which became operative in the Province of Manitoba, effective from May 1st/61. It is entitled An Act to facilitate the Reciprocal Enforcement of Judgements. And is in planning in complete harmony with the Act you are now giving consideration to.

Therefore may we ask that Section 178 be further amended by adding at the end of it these words. "And that where a true copy of a judgement in another province against the debtor applying for consolidation is supplied to the clerk, and a reciprocal agreement already exists between both provinces covering the enforcement of judgements, that it also shall be added with notice of same to the debtor".

Senator ASELTINE: Is there anybody from Manitoba or Alberta? Have we had any representations from those provinces?

The CHAIRMAN: No.

Senator CROLL: You do not propose that we continue now, do you, Mr. Chairman?

The CHAIRMAN: No. I might mention that Mr. Cook, the Registrar of Bankruptcy in Ontario, has been advised of this meeting, and he has indicated that he is a member of the committee of the Board of Trade and that therefore it would seem unnecessary for him to appear as well because he joins in what is contained in the brief.

I have here a letter from the Honorary Consul of West Germany. It is very short so perhaps I should read it. It is as follows:

It has come to my attention through the newspapers that you are fostering a Bill to amend the Bankruptcy Act, although I am not aware of its contents, or if the point I wish to make here is covered. My concern is with overseas creditors of defunct Canadian companies. Representing a German firm, who were creditors to the extent of \$9,000.00 odd in a Canadian business, I learned that they had not been informed of the Canadian company's proposal for settlement under the Bankruptcy Act. This was due entirely to the Canadian Trustee sending out notices by surface (ordinary) mail, rather than by Air Mail. In order to get instructions at the last minute, it was necessary to telephone to Germany, explain the proposal, and discuss the matter. This involved a cost of

nearly \$100. and as it is most unlikely that they will receive any dividend on their claim, it seemed to be adding salt to a wound.

At the meeting representatives of other overseas creditors, English and German firms, voiced their displeasure that their principals had not received official notification, statements, etc. prior to the meeting. I realize that the Trustee is not obligated to send notices Air Mail, but in that event he should be compelled to allow sufficient time between the date of mailing and the calling of the meeting. Either that or make it obligatory on the Trustee to Airmail notices to overseas creditors.

In the interest of Canada's reputation abroad, I feel it is to our advantage to show every consideration to suppliers there.

That appears to be all of the representations.

I shall now ask Mr. MacDonald and Mr. Larose if there is anything they wish to add at this time. If not, I suggest to the committee that we will want to consider what we shall do having regard to the recommendations that have been made.

Senator CROLL: Mr. Chairman, I do not know whether Mr. MacDonald and Mr. Larose had an opportunity of seeing these two briefs that were presented this morning before they came here. I assume that they did not.

Mr. MACDONALD: No.

Senator CROLL: Perhaps they should be given an opportunity of considering the briefs, and also that we be given some further opportunity of considering them. Speaking for myself at least, I might say that I am more confused today than normally, and I think the meeting should be adjourned until some future date.

The CHAIRMAN: Would you prefer that?

Mr. MACDONALD: I think that would be fair to all concerned, and particularly the committee. I do not think it would be helpful if we were to start off again now.

The CHAIRMAN: Then, is it the wish of the committee that we adjourn the consideration of this bill until a date to be fixed?

Hon. SENATORS: Agreed.

The committee adjourned its consideration of the bill *sine die*.

APPENDIX "A"

SUBMISSIONS OF THE CREDIT GRANTORS ASSOCIATION OF CANADA

To: The Chairman and Honourable Members of the Standing Committee on Banking and Commerce of The Senate of Canada, on Bill S-2 of the First Session, Twenty-Fifth Parliament of The Senate of Canada entitled "An Act to amend the Bankruptcy Act."

Mr. Chairman, Honourable Members of the Committee.

The comments on Bill S-2 of the current session of the Senate entitled "An Act to amend the Bankruptcy Act" (hereinafter called the Bill) have been prepared by the Credit Grantors Association of Canada (hereinafter called the Association).

Description of Association

The Association has in excess of 4,000 members and is divided into 133 separate credit units which are located in every major urban area in Canada. The membership is composed of:

- Chartered banks
- Consumer loan companies
- Fuel companies
- National department stores
- Petroleum companies
- Retail stores
- Sales finance companies

Comments on the Bill Secs. 1 & 2 of the Bill

The Association's comments and recommendations respecting the Bill are few in number and are in the main restricted to that Part of the Bill entitled "Orderly Payment of Debts." Before dealing with these specific items the Association wishes to express its satisfaction over the proposed removal of the sections of the Bankruptcy Act dealing with summary administrations. Annexed hereto as Schedule "A" is a copy of the brief submitted by the Association to the Minister of Justice in 1960 which serves to point up the abuses that have arisen under the Bankruptcy Act since its proclamation in 1949 by virtue of the unscrupulous activities of certain trustees licensed under the Bankruptcy Act which we believe are directly attributable to the existence of the summary administration provisions.

One of the honourable members of this Committee questioned the plight of a debtor in a jurisdiction that did not adopt the Orderly Payment of Debts part of the Bill after the summary administration sections of the Bankruptcy Act are repealed. We believe the answer to this inquiry is that any province that has no comparable legislation will immediately exercise its rights under Section 198 of the Bill, and those that have comparable legislation (such as Ontario: The Division Courts Act; Quebec: the Lacombe provisions of the Code of Civil Procedure; Newfoundland: The Judgment Debts (Instalments) Act 1962) already have adequate provision for the orderly arrangements of a debtor's affairs. You will also note from the information set forth in Schedule "A" that the two jurisdictions having substantially all of the personal

bankruptcies in Canada (Quebec and Ontario) also have legislation comparable to the Bill. This is not a complete answer to the honourable member's expression of concern, but we believe that the remainder of the provinces will elect to have this legislation proclaimed.

Notice of Consolidation Order Sec. 176

PART X

ORDERLY PAYMENT OF DEBTS

It is, in the opinion of the Association, essential that public notice of the application for a consolidation order by a debtor be given immediately after the making of the application, otherwise a credit grantor acting in good faith could advance credit to a debtor named in an order. We recommend that notice of the order be published in the Provincial Gazette and in a local newspaper, the cost of which will be paid out of the funds deposited with the clerk. In any event, we recommend the language of this section be amended to provide that the register referred to in subsection (1)(a) is a separate register which will be open for inspection by the public at all times when the office of the clerk is open.

Effectiveness of Order Secs. 176, 185

Once a consolidation order issues then by Section 185 of the Bill no creditor can bring any action against the debtor in any court of the province in which the debtor resides except as permitted by the Bill. If the entry on the register referred to in Section 176 is the only notice given a creditor of a consolidation order, then it is recommended that the operation of Section 185 be restricted to the county or the district where the order is on record or any other county or district in which a copy of the order is filed. As an alternative to this procedure, it might be advisable to have a central registry for each province in addition to the county or district registry.

Terms of Order Secs. 176, 182

It has been the experience of members of the Association that when substantial discretion is afforded clerks of courts and even judges of courts in creditor/debtor proceedings after judgment, the discretion is generally exercised in favour of the debtor. However, when the judge or the clerk, as the case may be, is obliged to deal with hundreds of applications for consolidation orders each week, such exercise of discretionary powers *per se* can inadvertently prejudice the creditor's position. We therefore recommend that, as in the case of the Quebec Lacombe legislation, the debtor be compelled to make regular payments of a minimum percentage of his earnings to the clerk for distribution. The preponderance of provincial legislation limits attachment proceedings to 30% of the debtor's wages. The Lacombe law in its present form has been in effect to the satisfaction of all interested parties for three years and provides for an unseizable portion of a debtor's salary equivalent to \$12 (per week) in the case of unmarried persons and \$24 (per week) in the case of married persons. Of the residue 30% is available for distribution ratably amongst creditors. We believe this schedule should be inserted as the minimum requirement to be contributed by the debtor under a consolidation order in all cases.

Notice to Creditors Secs. 177(3), 187(1)

Section 177(3) of the Bill requires the clerk to give notice of the time for hearing of an objection to the clerk's order, but such notice is confined to

the debtor, the objecting creditor and any creditor whose claim is being objected to. In Section 187(1), where a creditor is added to a consolidation order the clerk is required to give notice only to the debtor and the creditor being added. In each of these instances it is recommended that the notice referred to be given to all creditors named in the register, as each one of them will be affected by any decision.

Dispute of a creditor's claim Sec. 187(1)(2)

By virtue of this section, the right to dispute the addition of any claim to which the Bill applies which is not entered in the order is restricted to the debtor. It follows from the preceding comment that every creditor named in the order should also have the opportunity, either with or without the debtor, of disputing the addition to the order of any unregistered creditor.

Default under the Order Sec. 189

This section is comparable to the corresponding section of Bill 45 of the 5th Session (1959) of the Alberta Legislature which was entitled "A Bill to Provide for the Orderly Payment of Debts". A copy of the Alberta bill is annexed as Schedule "B". It is recommended that the discretion of the judge to rescind the order on the happening of any of the events referred to in subsection (1) be eliminated and that such rescission be automatic, thereby placing each creditor in the same position at the same point of time. This is the principle of both the Quebec and Ontario legislation, and it is respectfully submitted that it should be incorporated in the Bill.

Secs. 189, 193

All creditors of the debtor are allowed to participate in the consolidation order; however, only those with claims of under \$1,000 are compelled to. It has been the experience of the members of the Association in the Provinces of Ontario and Quebec that upon occasion a debtor will incur substantial debts and then apply for a consolidation order under The Division Courts Act of Ontario or file a declaration under the Lacombe provision of the Code of Civil Procedure. The protection of these statutes is then afforded the debtor, during which time he makes payments to the clerk. Before the clerk has made any distribution to the named creditors, however, the debtor of his own volition or after being solicited by an unscrupulous trustee makes an assignment in bankruptcy, at which time the clerk is obliged to pay to the Trustee the amounts received by him for distribution to the creditors named in the order. The persistent continuance of these practices has led the Association to make the following recommendations:

(1) Where a consolidation order is current and the debtor not in default thereunder, the registered creditors should be precluded from filing a petition in bankruptcy against the debtor and the debtor should be precluded from making any assignment in bankruptcy.

(2) In the event the debtor goes bankrupt after the date of the consolidation order and the clerk of the court still holds funds for the benefit of registered creditors, such funds should be distributed to the registered creditors *pro rata*.

Secured creditors Sec. 188

This section provides a secured creditor having a claim of less than \$1,000 with the right to retain his security and still rank as a creditor under the consolidation order. This, it is submitted, is contrary to the equitable principles

of the Bankruptcy Act. A secured creditor should be obliged immediately on the issuing of a consolidation order to:

- (1) realize his security and prove in the consolidation order for any deficiency if permitted by provincial law;
- (2) repossess or seize his security if the debtor is in default, retain the security and be precluded from any claim under the consolidation order; or
- (3) surrender the security to the sheriff of the county in which the debtor resides for judicial sale, with the proceeds from such sale being paid to the clerk for distribution under the consolidation order, and then file for the full amount of his claim under the consolidation order.

All of which is respectfully submitted.

(R. W. STEVENS)

November 20, 1962.

Schedule "A"
(Revised)

COMMENTS ON, and PROPOSED AMENDMENTS TO THE BANKRUPTCY ACT, 1949

as submitted on behalf of
THE CREDIT GRANTERS ASSOCIATION OF CANADA
by
Mtres. Roger Lacoste, Q.C., and Horace Friedman

1. Limitations

The interest of members of The Credit Granters Association of Canada in the Bankruptcy Act, and its application, seems to be directed principally, to the use or abuse of the provisions of the Act by small debtors, loosely termed wage-earners, who, either by way of Small Loans or Retail Purchases on Credit, have accumulated a sufficient quotient of debt to avail themselves of said Act in order to obtain relief, or at least a moratorium. Thus, comments which follow, will be restricted to such cases, and such portions of the Bankruptcy Act which may relate, or be applicable to them.

2. History

Although by the terms of the B.N.A. Act of 1867, the field of bankruptcy and insolvency was reserved to Federal Parliament, it was not until 1920 that the Dominion saw fit to adopt a Bankruptcy Act in present Form. The Province of Quebec, however, about 1888, treated with the matter of insolvent traders, as "Property and Civil Rights" within the meaning of S. 92 of the B.N.A. Act, in the sections of its Code of Civil Procedure, and until 1920, these last-named provisions were applicable. When the Dominion of Canada did finally legislate on Bankruptcy, no special provisions were provided to apply to the "individual who works for wages, salary, commissions or hire, and who does not, on his own account, carry on business".

However, in 1949, for the first time, the Bankruptcy Act made provisions for Summary Administration, apparently with a view to reducing costs to a minimum in estates where the realizable assets, after deducting the claims

of the secured creditors, in the opinion of the Official Receiver, do not exceed \$500.00. It is not meant to imply that the legislators intended to discriminate in favour of the small salaried debtor, but, in fact, since that date, bankruptcies of such persons have reached an alarming state. This is apparent from a cursory inspection of date furnished by the Dominion Bureau of Statistics. For the calendar year of 1957, there were 1245 bankruptcies of small wage-earners of which 1176 were in Quebec; for 1958, 1169 in Canada, of which 1035 were in Quebec; and for 1959, there were 1019 such bankruptcies in Canada, of which 855 were in Quebec.

Were this disease purely confined to Quebec, the present submission would lack validity, to the extent that it requests amendments to an Act affecting the whole of Canada. However, there is ample evidence that abuse of the Act is spreading, and at an alarming rate. For example, in the Province of Ontario, the figures for 1957, 1958 and 1959 are as follows:

Year	Wage-Earners	Bankruptcies	Proposals
1957		49	38
1958		92	44
1959		114	64

In view of the foregoing, the present submission is not only timely, but, in fact, urgent.

A closer examination of these figures yields the following general information:

- (a) The majority of these bankruptcies, constitute small debtors whose earnings, by way of salary or commission, is between \$40.00 and \$80.00 weekly;
- (b) The average total debts, exclusive of preferred and privileged claims, is approximately \$2500.00;
- (c) The majority of the debts in each of these cases, are alimentary in nature, and/or personal loans usually acquired for consolidation of alimentary debt.

3. Analysis

In view of the foregoing facts, some reason ought to be sought for the problems that are posed thereby, namely:—

- (a) The Increase of Wage-Earner Bankruptcies, generally.

Summary Administration, because, in fact, it does reduce costs for those whose assets are less than \$500.00 would, at first glance, seem to offer to the debtor a panacea to all his misfortunes, in that, to the uninformed, it would seem to provide a final release to the burden of debt. To the informed, is added the knowledge that the Creditor for small sums of less than \$1000.00, is very unlikely, because of the costs involved, to exercise the legal rights provided to the latter to collect part or all of his account, as the case may be.

- (b) The Disproportionate Increase of Wage-Earner Bankruptcies in the Province of Quebec.

It is felt that in the Province of Quebec, the absence, until very recently of realistic Provincial Legislation providing some relief to the wage-earner was, and may still be, the greatest factor contributing to this disproportion. Prior to 1958, the only legislation available in

Quebec which would grant to a salaried debtor some security against seizure of his salary, was the Lacombe Law, which required such debtor to deposit one-third of his gross salary, as compared with almost every other Province which provided a more practical and realistic approach to small debtor's consolidation of debt. Although the Lacombe Law has been realistically amended since, the practice still continues without abatement, and salaried debtors still make use of the Bankruptcy Act, and in particular, of Summary Administration in the misguided hope that their debts will be entirely wiped out. Sect. 135 of the Bankruptcy Act provides a description of debts from which a debtor cannot be freed. These are largely alimentary and fiduciary in nature, leading one to believe that Federal Parliament never intended to supplant rights provided to Creditors under Provincial Law with respect to property and Civil Rights.

Yet an ever present factor contributing to the excessive number of these Summary Administration Bankruptcies, is the fact that such debtors have, in the past, been the subject of solicitation, both direct and indirect, by trustees in the Province of Quebec, who, for a fee in the neighbourhood of \$300.00, agree to provide the debtor with a discharge from his obligation to pay his just debts. Admittedly, such debtors are not entitled to such discharge, but, in practice, they generally obtain it because creditors are unwilling to defray the disproportionate costs of contestation, or pursuit, or enforcement of their rights under the Bankruptcy Act.

4. Remedies Under the Present Act.

It is not the intention here, to condemn the Bankruptcy Act with respect to the use made of it, or abuse as the case may be, by the salaried debtor. On the contrary, the Bankruptcy Act, is in general, good legislation and offers to the Creditor many remedies against abuse, such as the protection afforded such creditors who have rights in property in the possession of the bankrupt; the right of the trustee and/or creditors to after-acquired property of the debtor including salary to the amount or proportion ordered by the Court, and the provisions of Section 135 which prevents discharge from certain types of obligation. However, the main obstacles that Creditors encounter in availing themselves of such remedies, seem to be:—

(a) The Legal Costs Involved.

The burden is on the Creditor to make Petitions from the very outset; should he have evidence of property exceeding \$500.00, he must request the Court to declare the matter non-summary; should the debtor be employed, he must press the trustee to require the debtor to deposit the seizable portion of his salary, or do so himself at disproportionate cost; should he desire to recover his property under, for example, a lien contract, he must establish his right with the trustee, and as often as not, proceed thereafter by a Court Order; should he desire to prevent a discharge of a debt envisaged by Sect. 135, he must be represented at the hearing and make his opposition.

(b) *Lack of Supervision in Summary Administration*

Admittedly, no Government department can undertake to minutely supervise directly the administration of each Bankrupt Estate. Provision, therefore, in the normal course of events, is made for the election of inspectors whose function is the supervision of the administration of the individual estate in the hands of the trustee. However, under Summary Administration, no inspectors are appointed and the entire responsibility for the proper administration of the

estate is left, without any direct supervision whatsoever, in the hands of the trustee, with the natural result, that the latter's interest may well be restricted to the recovery of his own fees and costs.

5. Conclusion

From the foregoing, it becomes apparent that the Bankruptcy Act was a better Act with respect to wage-earner bankruptcies, prior to 1949, than since. The addition of the provisions respecting *Summary Administration* has led to the abuse of the Act, to the detriment of both the Debtor and the Creditor.

It has been suggested that the best possible solution to the problem would be to remove the—"Individual Who Works for Wages, Salary, Commission or Hire, and Who Does not on His Own Account, Carry on Business"—from the operation of the Bankruptcy Act entirely. It has also been suggested that, in any event, he who possesses "no assets" should not be able to assign such "no assets" in favour of his Creditors. While favoring these submissions as being in the best interests of Creditors, it is submitted here that some cases do require, and ought to be entitled to some relief under the Act, and that, perhaps, recommendations should be of a less drastic order.

An analysis of what has heretofore been said, seems to indicate that the following general principles ought to do much to improve the lot of creditors in such cases, without the risk of jeopardizing Public Order, or Public Policy, namely:

- (a) *To Improve Supervision of the Bankruptcy Act.*
 - 1. By having at least one inspector in every estate.
 - 2. By seeking better enforcement of the supervisory provision of the Act.
- (b) *To Seek Amendments to the Act.*
 - 1. To remove the provisions respecting *Summary Administration*.
 - 2. To increase the sum of \$1000.00 to \$3000.00 in the definition of "insolvent person".
 - 3. To make it mandatory that every application for assignment by an "individual who works for wages, salary, commission or hire and who does not, on his own account, carry on business" receive the prior approval of the Bankruptcy Court.
 - 4. To extend the provisions of Sect. 135 to include additional debts alimentary in nature, from which the Bankruptcy cannot be discharged.

With this in view, the following amendments are recommended.

PROPOSED AMENDMENTS TO BANKRUPTCY ACT, 1949
SUBMITTED ON BEHALF OF CREDIT GRANTERS
ASSOCIATION OF CANADA

by

Messrs. Roger Lacoste, Q.C. and Horace Friedman, Advocates

Proposed Amendments

1. Amend Sect. 2, sub-paragraph (j) by deleting the words in the first paragraph thereof "ONE THOUSAND DOLLARS" and substituting therefore, the words "THREE THOUSAND DOLLARS."

Reasons

1. This is intended to change the definition of "insolvent person", so as to require a total indebtedness of \$3,000 instead of \$1,000 as heretofore. The

amended figure is more consistent with the value of the present dollar, and will also have for effect the elimination of a certain proportion of wage-earner bankruptcies.

Proposed Amendments

2. Amend Sect. 26 by deleting sub-paragraph (6) thereof.

Reasons

2. This change is intended to eliminate "Summary Administration", in the belief that Creditors' interests will be better served by the appointment of inspectors. Secondly, such elimination is necessary to remove the decision on the assignment application from the jurisdiction of the OFFICIAL RECEIVER.

Proposed Amendments

3. Add, after Section 26 the following:

Sect. 26A

"Section twenty-six shall not apply to an individual who works for wages, salary, commissions or hire, and who does not, on his own account, carry on business.

Reasons

3. Sect. 26A will require that any wage earner present a Petition for authorization by Court for an Assignment Order to issue.

Proposed Amendments

(2) Subject to this section, such individual may file in Court a Petition for permission to make an assignment of all his property for the general benefit of his creditors, if, and if it is alleged that (a) the debts owing to his creditors exceed three thousand dollars: and (b) he is unable to meet his liabilities generally as they become due: and (c) he has been, is, or will be unable to meet his liabilities by reason of lack of employment, illness, accident, or such other cause deemed sufficient by the Court:

(3) The Petition shall be verified by the affidavit of the Petitioner showing the property of the debtor divisible among his creditors, the name and address of his employers, if any, the salary, wages or other income earned or received per week, month or year as the case may be, the names and addresses of all his Creditors, and the amount of their respective claims, and the nature of each, whether secured, preferred or unsecured.

Reasons

Sect. 26A Sub-Para. 2 and 3 sets out the mandatory allegations, supported by affidavit with sufficient facts therein to enable a judicial decision to be rendered, or upon which a contestation by an interested creditor can be made.

Proposed Amendments

(4) The Petitioner shall cause to be served upon each Creditor by registered mail, a copy of his Petition and accompanying affidavit, at least 15 days prior to the date fixed for hearing thereon.

Reasons

Sect. 26A, Sub-Para 4

This section is intended to provide the Creditor with prior notice, and sufficient delay to contest the application prior to its allowance.

Proposed Amendments

(5) The Petition shall be filed in the Court having jurisdiction in the locality of the Debtor:

(6) At the hearing, the Court shall require proof of the facts alleged in the Petition, and of the service of the Petition as aforesaid, and, if satisfied with the Proof, may make an order authorizing the assignment.

Proposed Amendments

(7) Where the Court is not satisfied with the proof of the facts alleged in the Petition or of the service of the Petition, or is satisfied by the Petitioner, or any Creditor opposing said Petition, that the Petitioner is able to pay his debts, or that for other sufficient cause no order ought to be made, it shall dismiss the Petition; in the event, however, that the Court is of the opinion that the Petitioner is able to pay his debts in part, and by instalments out of earnings, it shall include in its order authorizing the assignment, such direction with respect to the amount to be deposited by the Petitioner weekly, or monthly, as the case may be having regard to the law of any Province respecting the seizable portion of salary or wages.

(8) Where any Creditor appears on the Petition, and denies the truth of the facts alleged therein, the Court may stay all proceedings on the Petition on such terms as it may see fit to impose on such Creditor as to costs, or on the Petitioner to prevent alienation of his property, and for such time as may be required for trial of the issue relating to the disputed facts.

Reasons

Sect. 26A, Sub-Paras 7, 8, 9.

It is intended that the Court have wide discretion in determining the terms under which the Assignment Order is granted. Although, at first glance, this procedure may seem to put additional burdens upon the judiciary, in practice, this will only occur in cases in which an appearance and/or contestation has been filed on behalf of a Creditor, otherwise falling within the jurisdiction of the Registrar. Even if contested, the Preliminary Hearing at this stage, will reduce greatly the number of Oppositions to Discharge presently burdening the Courts.

Proposed Amendments

(9) The Court may for other sufficient reason make an order staying the proceedings under a Petition, either altogether, or for a limited time, on such terms and subject to such conditions as the Court may think just.

(10) Upon an order authorizing the assignment being made, the Court shall appoint a licensed trustee as trustee of the property of the debtor, having regard, as far as the Court deems just, to the wishes of the Creditors, if ascertainable as the time.

4. *Delete*

Sections: 114, 115 and 116.

5. Amend Sect. 135, sub-para (g) by deleting the words "GOODS SUPPLIED AS"

Reasons

4. This change is in conformity with recommendation already made to eliminate "Summary Administration".

This is intended to extend the application of S 135 to additional debts of an alimentary nature, from which the Debtor cannot be discharged.

Dated at Montreal, Province of Quebec, this first day of April, 1960.

(SIGNED)
ROGER LACOSTE, Q.C.

(SIGNED)
HORACE FRIEDMAN

Schedule "B"

BILL

No. 45 of 1959

(As passed by the Legislative Assembly of the Province of Alberta)

(Note, the following is for information only and does not constitute an official copy)

An Act to Provide for the Orderly Payment of Debts by the Consolidation of Judgments and Other Debts

(Assented to Apr. 7 1959)

Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Alberta, enacts as follows:

1. This Act may be cited as "The Orderly Payment of Debts Act".
2. In this Act,
 - (a) "clerk" means a clerk of the district court;
 - (b) "court" means a judge of the district court;
 - (c) "registered creditor" means a creditor who is named in a consolidation order.
3. (1) This Act applies only
 - (a) to a judgment for the payment of money where the amount of the judgment does not exceed one thousand dollars,
 - (b) to a judgment for the payment of money in excess of one thousand dollars if the creditor consents to come under this Act, and
 - (c) to a claim for money, demand for debt, account, covenant or otherwise, not in excess of one thousand dollars.
- (2) This Act does not apply to a debt due, owing or payable to the Crown or a municipality or relating to the public revenue or one that may be levied and collected in the form of taxes or, unless the creditor consents to come under this Act,
 - (a) to a claim for wages that may be heard before, or a judgment therefor by, a magistrate under *The Masters and Servants Act*, or
 - (b) to a claim for a lien or a judgment thereon under *The Mechanics Lien Act*.
 - (c) to a claim for a lien under *The Garagemen's Lien Act*.
- (3) This Act does not apply to debts incurred by a trader or merchant in the usual course of his business.
4. (1) A debtor may apply to the clerk of the district court of the judicial district in which he resides for a consolidation order.

(2) Upon the application the debtor shall file an affidavit, in the prescribed form, setting forth:

- (a) the names and addresses of his creditors and the amount he owes to each creditor and if they are related to him, the relationship;
- (b) a statement of the property he owns or has any interest in and of the value thereof;
- (c) the amount of his income from all sources, naming them, and if he is married the amount of the income of his wife from all sources, naming them;
- (d) his business or occupation and that of his wife, if any; and the name and address of his employer and of his wife's employer, if any;
- (e) the number of persons dependent upon him, the name and relationship of each and particulars of the extent to which each is so dependent;
- (f) the amount payable for board and lodging or for rent or as payment on home property, as the case requires;
- (g) whether any of his creditors' claims are secured and if so, the nature and particulars of the security held by each.

5. (1) The clerk shall

- (a) file the affidavit, giving it a number, and record the particulars it contains in a register provided for that purpose,
- (b) upon reading the affidavit and hearing the debtor settle an amount proposed to be paid by the debtor into court, periodically or otherwise, on account of the claims of his creditors and enter particulars thereof in the register or, if so proposed, enter in the register a statement that the present circumstances of the debtor do not warrant the fixing of any amount, and
- (c) fix a date for hearing objections by creditors.

(2) The clerk shall give notice of the application to each creditor, stating

- (a) particulars of the entries in the register with respect to the debtor, and
- (b) the date on which he will hear objections thereto.

(3) The notice shall be served by double registered mail and the clerk shall enter in the register a memorandum of the mailing and the date of mailing of the notice.

6. Where no objections are received within twenty days after the mailing of the notices pursuant to section 5, the clerk shall note the fact in the register and shall issue a consolidation order.

7. (1) Any creditor may, within the time limited by section 6, file with the clerk an objection to the amount entered in the register as the amount owing to him or to any other creditor or to the amount fixed to be paid into court by the debtor or the times of payment thereof or to the statement fixing no amount.

(2) The clerk shall enter in the register a memorandum of the fact and date of the receipt of any objections filed with him.

(3) Where an objection is filed by a creditor the clerk shall forthwith, by registered mail, give notice of the objection to the debtor and to any creditor whose claim is objected to.

8. At the time appointed for the hearing the clerk may bring in and add to the register the name of any creditor of the debtor of whom he has notice and who is not disclosed in the affidavit of the debtor.

9. (1) At the time appointed for the hearing the clerk shall consider all objections filed with him in accordance with this Act and

- (a) if an objection is to the claim of a creditor and the parties are brought to agreement or if the creditor's claim is a judgment of a court and the only objection is to the amount paid thereon, he may dispose of the objection in a summary manner and determine the amount owing to the creditor,
- (b) if an objection is to the proposed terms or method of payment of the claims by the debtor or that terms of payment are not but should be fixed, he may dispose of the objection summarily and determine as the circumstances require the terms and method of payment of the claims, or that no terms be presently fixed, or
- (c) in any case he may on notice of motion refer any objection to be disposed of by the court or as the court otherwise directs.

(2) The clerk shall enter in the register his decision or the decision of the court, as the case may be, and shall issue a consolidation order.

10. (1) A consolidation order shall state

- (a) the name of and the amount owing to each creditor named in the register, and
- (b) the amount to be paid into court by the debtor and the times of payment.

(2) A consolidation order

- (a) is a judgment of the court in favour of each creditor named in the register for the amount stated therein, and
- (b) is an order of the court for the payment by the debtor of the amounts stated therein and at the time stated therein.

11. (1) The court may, on application on notice of motion by any of the parties affected thereby, review a consolidation order of the clerk and may vary it or set it aside and make such disposition of the matter as the court sees fit.

(2) The clerk shall enter the decision of the court in the register and it shall take effect in place of the order of the clerk.

(3) An application to review a consolidation order of the clerk shall be made by notice of motion within fourteen days of the making of the order.

12. The court may, in deciding any matter brought before it, impose such terms on a debtor with respect to the custody of his property or any disposition thereof or of the proceeds thereof as it deems proper to protect the registered creditors and may give such directions for the purpose as the circumstances require.

13. Upon the making of a consolidation order no process shall be issued in any court against the debtor at the instance of a registered creditor or a creditor to whom this Act applies

- (a) except as permitted by this Act or the regulations, or
- (b) except by leave of the court.

14. (1) The clerk may at any time require of, and take from, the debtor an assignment to himself as clerk of the court of any moneys due, owing or

payable or to become due, owing or payable to the debtor or earned or to be earned by the debtor.

(2) Unless otherwise agreed upon the clerk shall forthwith notify the person owing or about to owe the moneys of the assignment and all moneys collected thereon shall be applied to the credit of the claims against the debtor under the consolidation order.

(3) The clerk may issue a writ of execution in respect of a consolidation order and cause it to be filed with the sheriff of a judicial district and at any land titles office.

15. (1) Where at any time before the payment in full of the claims under a consolidation order a creditor to whom this Act applies and whose claim is not entered in the consolidation order makes his claim known to the clerk, the clerk shall upon notice to the debtor and upon settling the amount owing to the creditor cause the name of the creditor to be entered in the register together with an entry of the amount of his claim.

(2) Where the debtor disputes the claim of a creditor under subsection (1), the clerk shall on notice of motion refer the matter to the court and the decision of the court shall be entered in the register.

(3) Upon the entry of a claim in the register pursuant to this section, the claim becomes part of the judgment against the debtor and the creditors shall share in any further distribution of moneys paid into court by or on account of the debtor.

(4) The clerk shall add to the consolidation order the name of any creditor entered in the register pursuant to this section and shall give notice of the addition to the other registered creditors.

16. (1) Notwithstanding his claim under the consolidation order a registered creditor holding security for his claim may, at any time, elect to rely upon his security.

(2) Where the proceeds from the disposal of the security are in excess of the registered creditor's claim the excess shall be paid into the clerk and applied in payment of other judgments against the debtor.

(3) Subsection (2) does not apply where the security is in the form of chattels exempt from seizure under *The Seizures Act*.

(4) Where the proceeds from the disposal of the security are less than the registered creditor's claim the creditor's claim shall be reduced by the amount realized.

(5) Subsection (4) does not apply to a lien for all or part of the purchase price of goods to which section 19 of *The Conditional Sales Act* applies.

17. (1) A registered creditor may apply by notice of motion to the court where

- (a) a debtor defaults in complying with an order for payment or any other order or direction of the court,
- (b) any other proceeding for the recovery of money is brought against the debtor,
- (c) the debtor has, after the consolidation order was made, incurred further debts totalling in excess of two hundred dollars,
- (d) a judgment is recovered against the debtor for the payment of money in excess of one thousand dollars and the judgment creditor refuses to permit his name to be added to the register, or

- (e) the debtor has property or funds that should be made available for the satisfaction of the consolidation order.
- (2) A registered creditor may apply *ex parte* to the court where a debtor
 - (a) is about to abscond or has absconded from Alberta leaving personal property liable to seizure under execution, or
 - (b) with intent to defraud his creditors has attempted or is attempting to remove from Alberta personal property liable to seizure under execution.

(3) Upon the application the court may authorize the registered creditor to take on behalf of all registered creditors such proceedings to enforce the consolidation order as the court deems advisable.

(4) Upon the application the court where it deems it advisable may, on notice to all parties, make an order permitting the registered creditors to proceed each independently of the others for the enforcement of their claims under the consolidation order.

(5) Where an order is made under subsection (4) the debtor is not, without the leave of the court, entitled to any further relief under this Act during the currency of any claim against him entered in the register.

18. (1) A debtor or any registered creditor may at any time apply *ex parte* to the clerk for a further examination and hearing of the debtor in respect of his financial circumstances.

(2) A further hearing may only be held with the leave of the clerk or on his refusal leave of the court.

(3) The clerk shall give all parties to the consolidation order at least twenty days' notice of the time appointed for the hearing.

(4) Where after considering the evidence presented at the hearing the clerk is of the opinion that the terms of payment set out in the consolidation order should be changed because of a change in the circumstances of the debtor he may

- (a) vary the order as to time, amount and method of payment by the debtor, or
- (b) on notice of motion refer the matter to the court for settlement,

(5) Section 11 applies to a decision of the clerk under subsection (4).

19. (1) The clerk shall distribute the moneys paid into court on account of the debts of a debtor at least once every three months.

(2) The clerk shall distribute the money *pro rata*, or as nearly so as is practicable among the registered creditors.

20. (1) The clerk may for the purposes of this Act examine any person under oath and may administer oaths.

(2) The clerk shall make a written record in summary form of all evidence given at a hearing.

21. The Lieutenant Governor in Council may make regulations

- (a) prescribing the forms to be used and the fees to be paid in carrying out this Act, and
- (b) generally for the proper administration of and respecting the procedure required to be taken under this Act.

22. This Act comes into force on a date to be fixed by proclamation.



First Session—Twenty-fifth Parliament

1962

THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING COMMITTEE

ON

BANKING AND COMMERCE

To whom was referred the Bill S-2, intituled: "An Act to amend the Bankruptcy Act".

The Honourable SALTER A. HAYDEN, Chairman

No. 3

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THURSDAY, NOVEMBER 29, 1962

WITNESSES

Mr. T. D. MacDonald, Assistant Deputy Minister of Justice and Mr. John Larose, Superintendent of Bankruptcy, Department of Justice.

APPENDIX B

Communication from Mr. J. L. Biddell to the Honourable Chairman of the Senate Standing Committee on Banking and Commerce.

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1962

THE STANDING COMMITTEE ON BANKING AND COMMERCE

The Honourable Salter Adrian Hayden, *Chairman*

The Honourable Senators

Aseltine	Gouin	O'Leary (<i>Carleton</i>)
Baird	Hayden	Paterson
Beaubien (<i>Bedford</i>)	Higgins	Pearson
Beaubien (<i>Provencher</i>)	Horner	Pouliot
Bouffard	Howard	Power
*Brooks	Hugessen	Pratt
Burchill	Irvine	Reid
Campbell	Isnor	Robertson
Choquette	Kinley	Roebuck
Connolly (<i>Ottawa West</i>)	Lambert	Smith (<i>Kamloops</i>)
Crerar	Leonard	Taylor (<i>Norfolk</i>)
Croll	*Macdonald (<i>Brantford</i>)	Thorvaldson
Davies	McCutcheon	Turgeon
Dessureault	McKeen	Vaillancourt
Drouin	McLean	Vien
Emerson	Molson	Willis
Farris	Monette	Woodrow—50
Gershaw		

(Quorum 9)

*Ex officio member.

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Thursday, November 8, 1962:

“Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Higgins, seconded by the Honourable Senator Hnatyshyn, for second reading of the Bill S-2, intituled: ‘An Act to amend the Bankruptcy Act’.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Brooks, P.C., moved, seconded by the Honourable Senator Choquette, that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative.”

J. F. MacNEILL,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

THURSDAY, November 29, 1962.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 10.00 a.m.

Present: The Honourable Senators Hayden, *Chairman*; Aseltine, Brooks, Burchill, Croll, Drouin, Higgins, Hugessen, Irvine, Isnor, Kinley, Leonard, Macdonald (*Brantford*), McLean, Power, Reid, Roebuck, Smith (*Kamloops*), Turgeon, Vaillancourt, Willis and Woodrow.—22.

In attendance: Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel and the Official Reporters of the Senate.

Bill S-2, An Act to amend the Bankruptcy Act was further considered.

Mr. T. D. MacDonald, Assistant Deputy Minister of Justice and Mr. John Larose, Superintendent of Bankruptcy, Department of Justice were further heard in explanation of the Bill.

It was Resolved that a memorandum submitted by the Toronto Board of Trade be printed as an appendix to today's printed proceedings.

After discussion, and on Motion of the Honourable Senator Leonard it was Resolved that further consideration of the Bill be adjourned to December 6, 1962, in order to hear representations of the Montreal Board of Trade.

At 12.15 p.m. the Committee adjourned to Thursday, December 6, 1962, at 10.30 a.m.

Attest.

Gerard Lemire,
Clerk of the Committee.

THE SENATE
STANDING COMMITTEE ON BANKING AND COMMERCE
EVIDENCE

OTTAWA, Thursday, November 29, 1962

The Standing Committee on Banking and Commerce, to which was referred Bill S-2, to amend the Bankruptcy Act, resumed this day at 10.30 a.m.

Senator Salter A. Hayden (*Chairman*), in the Chair.

The CHAIRMAN: Honourable senators, we will now resume our deliberations on Bill S-2. May I just refresh your memories as to where we are with respect to this bill?

We have heard from the officials of the Department, we have heard representations from some organizations, and we have a request outstanding from the Montreal Board of Trade. A wire came in from them on November 21 in which they state that they wish to make representations within the course of the next ten days, and in which they also say that they hope no conclusive action will be taken by the Senate in the meantime.

On my instructions a wire was sent to them telling them that we were resuming the hearing on Wednesday, November 28—yesterday—and that if possible we would like to have their representations then. The Secretary of the Montreal Board of Trade then telephoned and said that they were working on their brief and that they would like to appear personally, but that they could not arrange their delegation to appear before December 12. I have not answered that as yet.

Let us consider what is left of this bill. Looking over the representations that have been made it would appear that the contest is as to whether the present section dealing with summary administration of estates should remain in the bill. The bill proposes the repeal of those sections, and the inclusion of a Part X which has been lifted out of certain provincial acts which have been declared invalid by the Supreme Court of Canada, and under which there is a consolidation of the debts of the debtor and the administration carried on through the district or county courts in the provinces. However, that Part X will only come into effect in relation to a province when the Lieutenant-Governor of the province invites, in effect, the Governor General in Council to proclaim the bill in relation to that province.

The first point, it seems to me, is, if the new Part X is passed into law and a province does not request its proclamation in relation to that province then there will be no summary administration proceedings at all in such a province, if the bill passes in its present form. The contest seems to be, therefore, as to whether the old provisions should remain and Part X be incorporated as well. If that is so then what changes should be made in the old provisions based on experiences or alleged abuses. It seems to me that the first question to be decided is whether or not the old sections should remain.

I did ask Mr. MacDonald to appear here. When he was making his initial presentation I said, in a rather loaded question at the beginning, that these two procedures follow parallel lines, and he more or less agreed with me at the time but I think he was trying to back away from it later on to some extent. If they proceed on parallel lines then there is room for both of them because they deal with different situations. Therefore, my own suggestion is that the

question we should decide is: Are we going to retain the summary administration proceedings presently in the Bankruptcy Act in the same form?

Senator CROLL: Let us not make that decision until we hear from Mr. MacDonald. If we decide now we will have cut him down to size immediately.

The CHAIRMAN: That is quite true. I am crystallizing the position.

Senator CROLL: Yes, and you have done very well. You have put it before us very well, but if there is a conflict I think we should hear everything about it.

Senator HUGESSEN: Should we not hear the representations of the Montreal Board of Trade? Is there an urgency about this bill?

The CHAIRMAN: I don't think there is that much of a hurry.

Senator HUGESSEN: I think their representations will be precisely from the point you mention; whether sections 114, 115 and 116 should remain in the act, or whether they should be taken out.

Senator BROOKS: When do you propose hearing them?

The CHAIRMAN: They say they cannot arrange their delegation to be here before the 12th.

Senator BROOKS: I think it is asking too much to wait until the 12th. This bill has been before us for quite a period of time. Montreal is not far away. Surely they can get their people together inside of two weeks. I do not know that there is any great rush in having this bill passed, but I know it should not be unduly delayed.

The CHAIRMAN: It has been intimated to me indirectly that as far as the Department of Justice is concerned it certainly would be appreciated if we heard the representations and spared them the obligation of hearing them.

Senator BROOKS: Did that come from the Department of Justice?

The CHAIRMAN: No, I said it was an indirect intimation.

Senator BROOKS: There are many intimations around this place, I find.

Senator ASELTINE: I suggest we set this matter down for hearing next Wednesday morning, and have you notify the Board of Trade of Montreal that they must be ready at that time.

Senator HUGESSEN: I think that is fair. December 12 is, perhaps, a little late. If they want to make representations they can make them next Wednesday.

Senator HIGGINS: I think you will be laying down a precedent if you hold up business for one person.

The CHAIRMAN: The Senate never establishes precedents. It makes its law as it goes along.

Senator LEONARD: I think Senator Aseltine has made the right suggestion. We will hear them on December 5.

Senator BROOKS: I might mention another point. I do not know when we are going to adjourn for Christmas but December 12 will be getting close to adjournment date, and the adjournment would run for a month or six weeks.

The CHAIRMAN: The only suggestion I have to make is that instead of sitting next Wednesday we sit on Thursday. The chairman of the committee cannot be here on Wednesday. I have to be in an area which is close to a spot that is much loved by the Leader of the Government in the Senate.

Senator BROOKS: I love a lot of spots.

Senator ASELTINE: One day will not make much difference.

The CHAIRMAN: Very well. Mr. MacDonald and Mr. Larose are here. If either one of you gentlemen, or both of you, have submissions to make on the basis of what has gone up to this morning perhaps you will come forward.

Mr. T. D. MacDonald, Assistant Deputy Minister of Justice: Mr. Chairman and honourable senators, Mr. Larose and myself are at your disposal with respect to any questions you may wish to put to us, of course, but we thought, subject to your approval, that this morning I might make four or five brief comments of a general nature, and then if you wish me to do so, I will run through the points made in the brief of the Credit Grantors Association relating to Part X—that is the Orderly Payment of Debts part. After that, depending upon what happens in the course of these proceedings, Mr. Larose, the Superintendent, may wish to add some comment on the question of the possible effect on small debtors of the repeal of various paragraphs of Section 114.

The CHAIRMAN: I do not want to circumscribe you at all. We have some submissions from you and also from Mr. Larose at a previous sitting on those points. I take it that today, instead of rehashing those, you are going to give some positive approach, are you, or are you going to answer the submissions made by the Credit Grantors Association? There was some answer to those made the other day, I think, by Mr. Larose.

Mr. MACDONALD: Not a great deal, as I remember, Mr. Chairman, to the points made in the Grantors Association brief in regard to Part X.

The CHAIRMAN: That is right. We certainly do not insist on answering those points. I take it that the committee does not wish it.

Senator CROLL: Oh yes.

The CHAIRMAN: I want to keep going forward, not to go back.

Senator CROLL: Go ahead, Mr. MacDonald.

Mr. MACDONALD: We will try not to duplicate or backtrack on any matters. I would like to refer first to the relationship between Part X of the bill, called the Orderly Payment of Debts Part and the repeal of the Summary Administration provisions. You raised some question earlier, Mr. Chairman, as to the relationship between them, as to whether they ran in parallel or were in substitution each for the other.

Senator DROUIN: And there was some thought expressed, Mr. MacDonald, I think, by the members of the committee and possibly by our brilliant chairman, that perhaps we could retain both.

Mr. MACDONALD: Yes, Senator Drouin. I think that any misunderstanding in that regard has been purely one of phraseology, because the relationship between the two parts I think is really clear. If honourable senators would bear with me just for a moment or two, I would revert to the origin of these provisions, as that would bring it out clearly.

Due to malpractices which have arisen under the act on the part of some trustees—and this is certainly not an indictment of trustees generally—for a considerable period the bankruptcy branch has been receiving representations for the repeal outright or the modification of the summary administration provisions. For example, such submissions came from The Canadian Bar Association and from the Chief Justice of the court having jurisdiction in bankruptcy in one of the provinces. In each case the first suggestion was to repeal the summary administration provisions, that is, repeal Section 26 (6) and Sections 114 to 116 inclusive. Then, as an alternative, if you were not prepared to do that, repeal certain paragraphs. There is close correspondence between the paragraphs singled out for repeal, as an alternative to complete repeal, by the chief justice and the Canadian Bar and the Toronto group which made representations at the previous sitting. The paragraphs in respect of which there appears to be more or less common ground are paragraphs (c), (f), (g) and (h) of Section 114. In the case of the Canadian Bar Association and the chief justice they each said: repeal the sections outright but as an alternative, if you are not prepared to do that, at least repeal the paragraphs (c), (f), (g) and (h) which I have mentioned.

Senator LEONARD: The Board of Trade suggested that paragraph (g) should be amended.

Mr. MACDONALD: The Board of Trade, when it came to paragraph (g), proposed it be amended. That is the paragraph relating to inspectors. The difference between them and the others was that they suggested, as I remember, that inspectors be optional in these cases.

The CHAIRMAN: In the discretion of the creditors at the first meeting.

Mr. MACDONALD: I have mentioned a number of the parties from whom representations for repeal or modification were received. There were a great many others. In several instances favourable things were said about the summary administration provisions but I think I am fair in saying that the vast majority was in the direction I have mentioned, the vast majority were for repeal outright or a serious modification. These representations—and this is one of the points I wish to make—had nothing whatever to do with Part X.

As a different development, legislation of the province of Alberta, which was the same as legislation of the province of Manitoba, and related to the Orderly Payment of Debts, was referred to the Supreme Court of Canada. In 1959 or 1960, that legislation was declared to be *ultra vires*, whereupon requests were received from the two provinces concerned that there be enacted, as part of the Bankruptcy Act, legislation corresponding to the provincial legislation that had fallen, and that could be proclaimed province by province upon the request of the province concerned.

The basis of the decision of the Supreme Court of Canada was, of course, that the provincial legislation impinged upon federal jurisdiction over bankruptcy and insolvency law.

Now those developments were parallel in that they both have a certain bearing upon small estates, but they arose independently in the way I have mentioned, and one is not a substitution for the other. They are related in the sense that they both come to bear upon small estates but there is no question of substitution either in the beginning or at the present time.

The second point I wish to make is also of a general character. I think there still may be a little misunderstanding on this point. The repeal of the summary administration provisions outright, if that be the conclusion reached, will not prevent any bankrupt either being petitioned into bankruptcy or assigning into bankruptcy, who could be petitioned into bankruptcy or could assign into bankruptcy at the present time. The outright repeal of these provisions does not shut the door to any case to which the door is open now. It does mean that if such a person goes into bankruptcy, either by petition or by voluntary assignment, then his estate will be administered under the ordinary provisions of the act rather than under the modifications contained in section 114.

Senator WILLIS: Would it not be hard to find a trustee to administer such a small estate? I do not think a trustee would take an estate of \$500, if section 114 were repealed.

Mr. MACDONALD: A trustee does not have to accept a case. Perhaps the Superintendent will speak to this point in addition to myself, but my impression is that it would be open to the trustee to make sure that his remuneration would be forthcoming under either situation, either under the summary administration regime or under the ordinary regime of the act. I am not sure that I can see at the moment any reason, any substantial reason, why a debtor would find any more difficulty in getting his estate handled by a trustee if the provisions were not there than if they were there. There is one respect in which it may be easier for a bankrupt to get a trustee to take in his estate, under the summary administration provisions, but it is not the sort of consideration we have in mind now. Some of the cases under the summary administration provisions, have been very attractive to trustees and it has been easy for a debtor to get

a trustee to handle them. In fact, there has been considerable evidence of trustees going out and soliciting such bankruptcies. I have in mind the abuses that are complained about under the summary administration provisions, whereby a trustee may say in effect to a debtor: "Yes, I will handle your estate in bankruptcy, but you must put down before me \$200, \$250 or \$300, which will take care of my fees and my expenses." Thereupon, and this is the way the complaint goes, the trustee then is satisfied to go through the form of administering the estate, he is assured of his fees, he makes no real effort to find out whether the debtor has assets, and he makes no effort to get in any touchable portion of the bankrupt's earnings.

Now, something has been made of the fact that before the summary administration provisions apply it must appear to the official receiver that the realizable assets do not exceed \$500, and that is true; but there are two things to be noted in connection with that: that it is only to be made to appear initially to the official receiver that that is so, and of course in some cases it is to the interest of the debtor to make it appear that it is so. It is not necessarily so. So that considerable may hang upon the aggressiveness of the trustee. If the trustee wishes to make inquiry as to whether there are other assets, he may well discover that there are. And there is the second point, that although not having assets exceeding in value \$500 the debtor may be in receipt of a salary or income from which he can contribute reasonable amounts to the trustee for distribution to the creditors.

The CHAIRMAN: Mr. MacDonald, the wording of that section 26, subsection 6, is:

... if in the opinion of the official receiver the realizable assets of the bankrupt after deducting the claims of secured creditors will not exceed \$500.

So the official receiver has to form an opinion. He may be prepared to do that lightly, but I would not want to assume that trustees that are licenced by the Superintendent are generally of a character who would treat their duties that lightly.

Mr. MACDONALD: I am not suggesting for a moment, Mr. Chairman, that they are; but the provisions of an act like this, of course, must not only be drawn so as to set up a framework within which the reasonable and reliable and honest trustee may operate, but they must also be drawn in such a manner as to discourage anybody who is tempted into irregularity. Incidentally, the official receiver who arrives at this opinion is not a trustee, he is not appointed by the Superintendent, he is a continuing official who is appointed by the Governor-in-Council.

Now, the third point of a general nature to which I wish to refer is this, that the ordinary principle of the Bankruptcy Act—and that is applicable to summary administration estates as well as to other estates—is that all the assets including realizable income of the debtor, subject only to such parts as are made exempt from seizure by provincial law, are available to answer the claims of the creditors; and according to the application of that principle it should be the creditors and not the debtor who will suffer by the elimination of any economies that may exist in section 114. If in accordance with that principle of the act the debtor is contributing everything that he can, everything that he is by law compelled to contribute for distribution among his creditors, then it is not upon him that would fall any slight increases in administration cost, but upon the creditors, because there would be less money left for distribution among them.

My next point is that it is the creditors, at the present time, and not the debtors, who are complaining. The complaint, on the part of the creditors, is that under the actual working out of the summary administration provisions

they are suffering because in many cases attempts are not being made to realize upon all the assets, both existing assets and seizable portion of wages and salaries, that might be realized for distribution among them. It is the creditors who are complaining. It is the creditors who are saying that the summary administration provisions are reacting, in the light of experience, to their disadvantage, and it is upon those creditors that should fall, in accordance with that principle of the act, any increased costs of administration which would be involved by having the estates administered under the ordinary provisions of the act.

Senator LEONARD: So that if we leave the sections in we will be looking after the interests of the creditors?

Senator KINLEY: Both the creditors and the debtors too.

Mr. MACDONALD: I believe the Superintendent, on the last day, said he expected a three-way advantage—for creditors, for debtors, and—perhaps he did not add this, but I think this was in his mind—the discipline of this act generally.

The CHAIRMAN: What would react?

Mr. MACDONALD: The repeal or modification of the summary administration provisions—that it would react to the advantage of the creditors for the reasons I have just mentioned. It would tend to their advantage because there would be more pressure on the trustees to get in all the realizable assets of the debtor.

The CHAIRMAN: Why more pressure?

Mr. MACDONALD: There would be provision for inspectors, there would be the requirement to file a bond which in itself would perhaps have a certain disciplinary effect upon the trustee, and there would be the elimination of the provisions which place emphasis on getting the debtor discharged at the earliest possible moment. And I think that the elimination of, for example, paragraph (h) would benefit the creditors. Paragraph (h) says:

114. The following provisions apply to the summary administration of estates under this Act, namely,

(h) the examination of the bankrupt referred to in section 117 shall be held at the first meeting and any of the creditors or their representatives or solicitors may take part therein;

Now, my impression is that this paragraph has been considered to bring on the examination of a bankrupt before the creditors were actually ready for it. The superintendent would like to comment upon that later too.

Senator HIGGINS: Does summary jurisdiction procedure apply only to estates of \$500 and under?

Mr. MACDONALD: Yes, generally speaking, Senator Higgins, that is correct.

Senator HIGGINS: Now a bankrupt, or one who thinks he is bankrupt, can apply by petition if his estate is \$1,000 and over? Isn't there some hiatus between \$1,000 and the \$500?

Mr. MACDONALD: I think not. I think they relate to two different matters. One is the test as to when a debtor can make an assignment in bankruptcy or can be petitioned into bankruptcy; that is, some creditor or group of creditors, or in the event of assignment the debtor himself, must find debts totalling at least \$1,000. The \$500 figure comes in when the estate comes before the official receiver and he asks himself: "Now, irrespective of the debts that got you into bankruptcy, what are the assets you have that will be available for distribution to your creditors," and if they appear to the official receiver not to exceed \$500 in value, then the summary administration provisions apply, but there is no conflict or hiatus.

Senator HIGGINS: Can a person petition for his own bankruptcy where he owes between \$500 and \$1,000? There is a hiatus there, isn't there? Unless a creditor petitions that man just carries on in the ordinary way, isn't that right? There is no way of putting him into bankruptcy at all when he owes \$750. Is that not right?

Senator HIGGINS: Is that right?

Mr. MACDONALD: No, Senator Higgins. I suggest, again, there is no relationship or conflict between the two. Whether it is a petition by creditors or a voluntary assignment, somebody has to find debts that add up to \$1,000.

Senator HIGGINS: But suppose they add up to only \$750?

Mr. MACDONALD: He does not get under the summary administration provisions.

Senator HIGGINS: He does not come under the other either; he is lost.

Senator DROUIN: He just has to increase his debts a bit.

Mr. MACDONALD: That brings me to the end of the general points, Mr. Chairman, and now, if you wish me to do so, I am prepared to make some comment on the submissions of the Credit Grantors' Association of Canada relating to Part X. That depends on how interested you are in that particular aspect, and whether you want to have such comment on the record.

Senator CROLL: That was the purpose of the adjournment.

The CHAIRMAN: Yes. I think the simplest way would be for you to develop them. I am sure you have them in an order there.

Mr. MACDONALD: I hope so.

The CHAIRMAN: Knowing you, I would say you have.

Mr. MACDONALD: Thank you.

The first submission was that public notice should be given of the application for a consolidation order. My comment would be that there is, of course, no objection to the principle of notifying the arrangement to all interested parties, to the extent that it would serve a desirable purpose. However, this submission would have the following consequences, which should be noted. First, it would, to some extent, stigmatize the debtor; it would advertise his case to the public. Second, it would increase the cost of administration, directly or indirectly. Third, it would militate against the simplicity of administration, to a degree. Such publicity was not part of the Manitoba or Alberta act; nor, so far as I am aware, is it part of the Division Courts Act of Ontario or the Lacombe law of the province of Quebec. The fear of the association appears to be that in the absence of such publicity a creditor might be unaware of the debtor's situation and extend him additional credit. It is doubtful, however, that such a creditor would be worse off because of the existence of a consolidation order than any creditor who, in the absence of a consolidation order, advances credit to a debtor who, unknown to the creditor is in a shaky situation.

The second submission was that the register of consolidation orders should be a separate register, and open for inspection while the office of the Clerk is open. This appears to be a reasonable submission. It would probably be put in effect in any case. The Clerk is carrying on a public office and I should think, in the ordinary course of events, he would maintain a register which would be available to the public.

Senator ASELTINE: Isn't that always the case?

Senator KINLEY: Not in rural districts, I think.

Senator ASELTINE: In the courthouse you can search anything.

Mr. MACDONALD: In any event I should think there would be no harm in making it an express requirement.

Senator HUGESSEN: Have you an express form in which to put this?

Mr. MACDONALD: Not at the moment.

Senator DROUIN: Here is the amendment as proposed. It says that:

176. (4) The register referred to in this section shall be a separate register and shall be open for inspection by the public at all times during which the office of the clerk is open."

That would be subsection 4 of section 176 and would be an amendment to the section. Then subsection 1, subparagraph (a) of section 176 would be as follows:

176. (1) The clerk shall

(a) publish a notice in the provincial gazette of the province in which the debtor resides setting forth the name and address of the debtor and the fact that an application has been filed under this Part and the date fixed for hearing objections by creditors.

Would you see any objection to inserting these amendments, Mr. MacDonald?

Mr. MACDONALD: As far as the latter amendment is concerned I think that is governed by the comments I have made. The question is whether it is desirable in legislation of this kind to advertise the situation of the debtor. This debtor is not in bankruptcy. In fact one object of part X is to prevent him from becoming a bankrupt. The idea is that he gets together with his creditors and says "I haven't got the resources to pay your debts at the present time in full, but what I should like to do, and what I am willing to do, is to make arrangement whereby we go before the Clerk of the Court and he determines how much I can pay, and I will pay that into court periodically until you are all paid off in full."

Senator DROUIN: That would apply only to those debtors of which he has given a list. He might hide some. If, for example, somebody is away or somebody does not live close by it might go unnoticed by those creditors, and they would not be included.

Senator CROLL: But such a creditor is not precluded from coming in. He is not precluded from coming in if he notices it later on.

Mr. MACDONALD: I think this is worthy of consideration: if a debtor is of the frame of mind to try not to go into bankruptcy but to go to the Clerk of the Court and try to make an arrangement to pay all his debts off in full, then it is questionable whether it is to his advantage to conceal the existence of other creditors.

Senator HIGGINS: In any case, would it not be fact that if he sues you in court and gets a judgment and then tries to levy on your wages he will be told that your wages are attached under an order under the Bankruptcy Act. After all, the law helps only those who help themselves.

Senator CROLL: Yes, but it seems from the import of what Mr. MacDonald said that the debtor knows all of the creditors he has ever had or he is likely to have, and he throws them all in. He would be the last man in the world to avoid naming any one of them. I am certain of that. His other creditors, if they are all in a small town, will look around and say: "What about Jones doesn't he owe Jones something?". I think what Mr. MacDonald has said carries a great deal of weight.

The CHAIRMAN: I think you have got to assume for the purposes of Part X that if a man goes to the trouble of seeking a consolidation of his debts that

he is honourable in trying to bring in all of his debts in order to work out some relief. To that extent a consolidation—well, that is the only way in which it will be beneficial to him.

Senator DROUIN: Perhaps he is being pressed very hard by one of his creditors, and if he does not disclose them all he might deposit less.

The CHAIRMAN: But he does not gain anything by it.

Senator DROUIN: He gains time.

Mr. MACDONALD: The next submission was that the restriction against bringing an action while a consolidation order is in effect should be limited to the county or district court where the order is on record, or where a copy is filed, or, in the alternative, there should be a central registry.

The first suggestion, about limiting the effect of the consolidation order would, in large measure, defeat the purpose of the part. As to the maintenance of a central registry there is no objection to this as such. It is to be noted that it would be in the direction of complicating and making more expensive the procedure. I simply say that as a question of fact. One of the principles of the part was to keep the machinery as simple as possible, compatible with due administration.

Senator LEONARD: Has there been any central registry under the orderly payment of debts act in the two provinces where they were operating?

The CHAIRMAN: It was only operating in one province, I believe—in Manitoba.

Mr. MACDONALD: Senator Leonard, there is no provision in the Manitoba act for such a central registry. The point never came up, and we never put the point expressly to the Manitoba authorities. I should be very much surprised to find that there had been one, but I cannot say categorically that there was not.

A great many of the cases in Manitoba, as Senator Haig mentioned at the first hearing, were in the Winnipeg district, and that may have had some bearing on the question.

The fourth submission was that Part X should specify a minimum percentage of the debtor's earnings to be paid into court, and that the Lacombe law might be followed in this respect.

The Division Courts Act of Ontario provides that the debtor must pay into court from 15 to 30 per cent of his average weekly income, depending upon the size thereof, but the judge may vary these percentages because of extenuating or other circumstances.

Under the Lacombe law the unseizable portion of a debtor's salary is \$12 a week if he is unmarried and \$24 a week if he is married, with 30 per cent of the residue available for distribution. It would appear preferable to leave this matter to the judgment of the clerk—this is by way of comment, of course—subject as it is to review by the judge under Sections 179(1)(c) and 183 of the act.

Submission 5: Notice of the hearing of an objection need only be given at the present time, as the bill is worded, to the objecting creditor and the debtor and any creditor whose claim is objected to. Notice of addition of a creditor to the order need only be given to the debtor and such creditor. This was their point: that such notice should go out to all creditors.

The comment on that is that here again there is no objection in principle to the submission as such, but it does increase the administrative work required to be done. It was not in the Manitoba act or in the Alberta act. It would appear that the debtor could ordinarily be relied upon to contest an invalid claim.

Senator LEONARD: May I come back to the question of a percentage of salary or earnings? Are you aware of whether or not any practice has developed in Manitoba in the administration of the Orderly Payments with respect to a percentage of earnings or salaries such as under the Lacombe Act or under the Ontario consolidation?

Mr. MACDONALD: I am not aware of any such practice having developed. My impression—and it is only an impression—is that each case was dealt with on a pretty *ad hoc* basis.

Submission number 6 was that notice of a claim to be added should be given to all creditors, not only the debtor and the creditor asserting the claim, and any creditor, as well as the debtor, should be allowed to dispute it. The comment is that it is true that, on the occasion of the original application for a consolidation order, all creditors receive notice of all claims and each can dispute the claim of any other creditor. The Manitoba Act and the Alberta Act—which never came into force, of course—dispensed with this general notice, in the case of an added claim, presumably in the interest of economizing on the work and cost of administration.

Here again there is no objection in principle to the submission as such, but here again it should be noted that it does add to the administrative work. It would appear that the debtor in the case of an added claim, might be relied upon to object to any invalid claim, since it would be in his own interest to do so.

The CHAIRMAN: Of course, creditors are interested, too.

Mr. MACDONALD: Yes, of course. Submission number 7 says that rescission of a consolidated order should be automatic on the happening of any of the events referred to in section 189.

Section 189 sets out certain events in which, upon application to the court, the consolidation order may be set aside. The submission is that, instead of requiring an application, the setting aside of the consolidation order should be automatic on the happening of those events, in order to place each creditor in the same position at the same point of time, this being the principle of the Quebec and of the Ontario legislation.

The comment is that the happening of one of the events mentioned in Section 189 may not necessarily be the fault of the debtor, or there may be extenuating circumstances, and it may not even be in the interest of the creditors themselves for the consolidation order automatically to cease to have effect. Also, a question arises as to how the happening of the event and the rescission of the consolidation order become a matter of record, if there is not some kind of an application to establish that they have occurred.

It is true that, under the Ontario legislation, if the debtor is in default for a certain period, the order *ipso facto* terminates; but that is made subject to an application by the debtor for a stay of proceedings.

The CHAIRMAN: Could I interrupt for a moment? There are two things I wish to say.

There has been a supplementary statement sent in from Mr. Biddell on behalf of those who appeared with the delegation of the Board of Trade of Toronto. In this statement he comments on what was offered pro and con at the meeting at which they appeared. He also discusses part X and the brief of the Credit Grantors Association. I suggest that it should be printed as an appendix to our proceedings today, so that every senator would have it.

(*For text of letter, see appendix, p. 91.*)

The second point is that I find it necessary to leave and I should like to ask Senator Hugessen if he would take the chair.

Senator LEONARD: From whom was that letter?

The CHAIRMAN: From Mr. Biddell of the Clarkson Company Limited. He was a member of the delegation of the Board of Trade and he is presenting the views of himself and the delegation, arising out of their appearance and what was said then.

Senator HUGESSEN in the chair.

The Acting CHAIRMAN: You may proceed, Mr. MacDonald.

Mr. MACDONALD: There are just two more submissions to be dealt with. The next submission, number 8, was that while a consolidation order is in effect, a registered creditor should be precluded from filing a petition in bankruptcy and the debtor from making an assignment; and if the debtor does go bankrupt the funds in court should be distributed to the registered creditors, rather than go to the trustee in bankruptcy. The comment here is that the position under the Manitoba legislation was that the ordinary procedures under the Bankruptcy Act were not placed in abeyance by a consolidation order.

Of course, constitutionally, they could not have been, but the same principle has been carried into this bill, although here they could be.

Under this submission, a registered creditor could not put a bankrupt into bankruptcy, while an unregistered creditor could. The repeal of the summary administration provisions or modification of the same is expected to decrease the temptation of an unscrupulous trustee to solicit, directly or indirectly, a debtor to go into bankruptcy.

The reason for that comment is that the submission was to the effect that the debtor, once he was under a consolidation order, should not be allowed to go into bankruptcy, or be capable of being put into bankruptcy, because in some cases, a trustee, hungering for business, would go to a debtor who was getting along very well under the Lacombe Law and say to him, "Those provisions are too onerous, why don't you come to me, go into bankruptcy, and I will get you out of your debts more cheaply." Now, if the summary administration provisions are changed that temptation will be lessened.

As to the allocation of funds in court, in the event of bankruptcy, it would appear that the proper allocation of such funds is to the trustee. Once the debtor becomes bankrupt, the principle of the bankruptcy legislation is that everything is frozen for distribution among all the creditors.

Senator LEONARD: Does that not mean that the trust funds in the hands of the court are not really trust funds for those creditors who have registered and for whom the funds have been paid and allocated?

Mr. MACDONALD: It is a question of policy. By the operation of Part X, as it is, they are not trust funds. That does not of course decide the policy as to whether they should be trust funds, but under Part X they are not, because Part X says that in the event of bankruptcy they are not considered as trust funds but they go to the trustee.

Senator LEONARD: Presumably they should not be looked upon as trust funds, as a matter of policy, because of the character of the payments that have already been made. Had the creditors received payment the day before the assignment, then they would have them, and whether or not funds already paid over by the debtor should not be treated in the same way as funds already paid and received, would be a matter of policy.

Senator DROUIN: But this is to remove completely the temptation of the trustee, and does not the Lacombe law apply there?

Mr. MACDONALD: Not entirely, if I may suggest so, Senator Drouin, because what the trustee may say to the debtor is: "Give me \$200 or \$300 for administration and I will get you out of this." The amount standing to the account of the debtor, under the Lacombe law, may be quite small at the moment and may

not in itself interest the trustee. Also under the Lacombe law those funds apparently stand to the credit of the creditors, so that the trustee does not—

Senator LEONARD: But that is the principle we are now arguing for.

Mr. MACDONALD: Yes. I suggest there are things to be said on both sides. From the standpoint of the creditors, under the consolidation order they can say: those moneys were actually paid in to satisfy our claims, and our claims alone; they were already paid in, and if we had gone after them the day before the bankruptcy we would have had them and they should belong to us. On the other hand, that is not really different from what happens in the case of the ordinary debtor. If Mr. Smith is in a shaky position and he intends to pay off certain creditors tomorrow and scrapes up enough money to do so, and puts it on his desk waiting for them to come in, and a petition intervenes, then, notwithstanding the fact that had the creditors come in the day before they would have got the money, they don't get it; so it is not very different.

The ACTING CHAIRMAN: I suppose from the practical point of view it depends to some extent how often these moneys are distributed under the consolidation order. What is the practice?

Mr. MACDONALD: At least every three months, under the act.

The ACTING CHAIRMAN: How do they do that in Manitoba? Three months or oftener?

Mr. MACDONALD: It is the same provision that was in the Manitoba act. Now, as to the exact practice, I cannot say.

Senator LEONARD: I would not see any difference between the money still on hand and that which has already been paid and collected by the creditors under that consolidation order, followed by the other procedure, the assignment in bankruptcy.

Mr. MACDONALD: I do not think that would make any great difference in the principle of the bill, Senator Leonard.

Senator LEONARD: No.

The ACTING CHAIRMAN: What sort of an amendment would that require?

Mr. MACDONALD: It would require an amendment to section 193. It would require an amendment which would be very much in the terms of the section that Senator Drouin read from the Lacombe law to the effect that these were trust funds belonging to the creditors registered at the time.

The final submission was: That a secured creditor should not have the right to retain his security and still rank as a creditor but should be required either to realize the security and prove any deficiency or obtain or retain the security in lieu of his claim under the consolidation order or surrender the security to the sheriff for judicial sale.

My understanding of this submission is that it is in the direction of saying to the secured creditor, you must sell the debtor out so that there will be more proceeds left for the ordinary creditors. The comment is that where the number of secured creditors, and creditors not embraced by Part X, is significant, the success of a consolidation order would probably depend upon the debtor coming to some understanding with these other creditors. The claim under a consolidation order of a secured creditor who realized his security would be reduced pro tanto and the secured claim of a creditor who was paid something under a consolidation order would also be reduced pro tanto.

The thrust of the submission appears to be to force the secured creditor to sell the debtor out and it does not appear that this would necessarily be desirable even on the part of the creditors themselves. The principle of the Bankruptcy Act is, of course, different here, because under the Bankruptcy Act all the assets of the debtor are to be divided among his creditors and he is to

retain no property except such property as the provincial law declares not to be seizable. The principle of Part X on the other hand is not to put the debtor into bankruptcy but to keep him out of it.

Senator HIGGINS: What happens to debts contracted by the debtor after this arrangement has been made? Suppose a debtor does contract a debt is there any provision for that?

Mr. MACDONALD: Yes, there is provision. The creditor can still come in. Under certain circumstances, also, the creditors could then have the consolidation order set aside.

Senator LEONARD: That applies to additional debts up to \$200.

Senator KINLEY: If he incurs debts over \$200 the creditor cannot collect, can he?

Mr. MACDONALD: If he goes over \$200, application can be made by one of the creditors to have the consolidation order set aside.

Senator HIGGINS: The last stage would then be worse than the first because then he would get nothing.

Mr. MACDONALD: Finally, Mr. Chairman, one representation was received in the department direct from the province of Manitoba subsequent to the introduction of the bill proposing a very technical change in subsection (3) of section 186. I think that this submission deserves attention. It is on page 6 of the bill. What they point out is that the words "writ of execution" are more apt in relation to some other provinces than Manitoba and they would like the subsection changed to read like this: "The clerk may issue a writ of execution or certificate of judgment."

The ACTING CHAIRMAN: That corresponds more with the Manitoba provincial terminology, does it not?

Senator ASELTINE: A writ of execution is more effective than a certificate of judgment.

The ACTING CHAIRMAN: I do not see any difficulty here. Why don't we pass this provision right away?

Senator LEONARD: I presume you are dealing with line 42 on page 6 of the bill.

The ACTING CHAIRMAN: Yes.

Mr. MACDONALD: There are some further changes in the other lines too, Senator Leonard, and perhaps I might read the whole new subsection, as it would be amended.

The clerk may issue a writ of execution or certificate of judgment in respect of a consolidation order and cause it to be filed in any place where such writ or certificate may bind or be a charge upon lands or chattels.

Senator CROLL: There is no objection to that.

Senator ASELTINE: But you have to have the writ of execution, and the judgment would not do it.

Senator KINLEY: Are we considering an amendment now, Mr. Chairman?

The ACTING CHAIRMAN: It is purely a technical, verbal amendment that is suggested for the province of Manitoba, and perhaps we could deal with it right away.

Senator KINLEY: Are we going to deal with the bill now?

Senator CROLL: No one will object to that part of the amendment, because it is a technical phrase.

Senator KINLEY: I do not know.

The ACTING CHAIRMAN: We will leave it until we decide at our next hearing then.

Senator ASELTINE: We will deal with that when we come to it.

The ACTING CHAIRMAN: Is that the end of your submission, Mr. MacDonald?

Mr. MACDONALD: Yes, Mr. Chairman.

The ACTING CHAIRMAN: Are there any questions to be asked of Mr. MacDonald on his submission?

Senator LEONARD: I would just like to say this, Mr. Chairman, that it may be the sense of this committee is that the summary jurisdiction sections should stay in some form or other and, without asking Mr. MacDonald to agree to that, I am wondering whether when he comes before us again—so that if that is our sense we might be prepared to deal with it—would he prepare some amendments to the bill, without binding himself or Mr. Larose, on the basis that those sections might stay in with some amendments which would meet the objections that have been raised to the summary administration provisions, so that we might consider then those amendments? Is that asking too much of you, Mr. MacDonald, to do that?

Mr. MACDONALD: I do not think so, Mr. Chairman. All that you are asking, really, is that we put in drafting form, without any commitment whatever, some of the ideas that have been put up?

Senator LEONARD: That is right, Mr. MacDonald. Perhaps that will also involve some changes in Part X as a result of continuing to keep them, if we do decide to keep the summary administration procedures in some amended form.

Mr. MACDONALD: Yes, but I am not sure, Senator Leonard and Mr. Chairman, that I see at the moment why a change in the summary administration part will necessarily mean a change in Part X.

The ACTING CHAIRMAN: I think we have to consider them as completely separate.

Senator KINLEY: Mr. Chairman, I will not be here next week, but I have been in the business for 50 years, and I have faced this sort of situation all my life, and I regard this as a simple little method whereby people can get together and settle their affairs without too much red tape. They go to the clerk of the court in a rural community, who knows every instrument that goes through that court and the judge next door, and he knows and the creditors know the whole situation. I am in favour of anything that we can do to reduce overhead in these matters. If I can get my money from a man in three years, I am happy. And I would be happy if I got 50 per cent. The way it is today the Government should be the partner. If you lose it they pay 50 per cent anyway, and furthermore if you go to law you have to pay \$25 for a lawyer. I want to get clear of that; let us have a settlement. You can sue in the town court up to \$500, and you don't have to go through the courts of record. This is a Government bill; it is not a political bill. We have an abundance of legal talent here, but they don't agree on this things. I won't be here later, but I would like to see the bill go through in its entirety, as it is.

The Acting CHAIRMAN: Mr. Larose wants to add something to what Mr. MacDonald said.

Senator DROUIN: Something new?

Mr. LAROSE: I really think it is. I had come prepared to make a few remarks, but I must confess that Mr. MacDonald covered the ground very well and very thoroughly. However, there are two points, and one of these I think is very important. I should like to say a few words on a question which was raised earlier as to the advantage to the debtor of leaving the summary

administration provisions in the Act. As Mr. MacDonald pointed out even were these provisions deleted, this debtor could still resort to the Bankruptcy Act. Moreover at the present time he pays the trustee a certain amount, \$200, \$300, \$400, but what does he get out of the summary administration in fact? He obtains a temporary stay of proceedings for as long as the administration of the estate remains, but it may well be he does not obtain anything else. Many of these debtors don't even receive a discharge. If they don't, all they have received is a temporary stay of proceedings, nothing more. Even if they do obtain a discharge there are certain debts under section 135 of the Act that are excluded, in other words, an order of discharge does not relieve them of these debts. I refer in particular to what we call alimentary debts, or debts for the necessities of life. And unfortunately you will find that too many of these debtors can be misled into resorting to the Bankruptcy Act in the belief that all they have to do is to make an assignment to be cleared of their debts and that a discharge will follow automatically. I think that this point should really be borne in mind in giving consideration to the usefulness of summary administration to the debtor.

Senator CROLL: Isn't time a very important element to that man?

Mr. LAROSE: Time is what he is buying, but only that. Actually he is going to be in the same position after the expiration of that time as he was before.

Senator CROLL: He may not be. He may find himself crowded at a particular time, and he might find it convenient to get that crowd off his back for a while.

Mr. LAROSE: If that were the case I think you would find two happenings; one is that the debtor would proceed with his discharge and get all his creditors off his back, which in many cases he does not do at present and, consequently, his application would be placed before the court at an early date, and secondly the trustee would complete the administration in short order.

Senator WILLIS: This has been in force since 1949, and the Toronto Board of Trade said that 800 took advantage of it in 1962 up to date.

Mr. LAROSE: I have forgotten the figure.

Senator WILLIS: It was a large figure.

Mr. LAROSE: I think the board will agree with me that the development of summary administration, or the increase in volume of summary cases in the province of Ontario, is a comparatively recent development. They have not had the experience with these provisions and their practical application that other parts of the country have.

Senator WILLIS: But they were here, and they are experts in bankruptcy.

Mr. LAROSE: I agree, but they have not had the years of experience. I can quote statistics to show you that summary administration in Ontario is not the problem it is elsewhere—at least, it has not been until recently.

There is just one brief remark I would like to make, and that is with respect to the question of the examination of the bankrupt referred to in Section 114, paragraph (h), I think. Exception has been taken to that, and I might say that this examination of the bankrupt at the meeting of the creditors—and these meetings, I might add, are not always well attended—is not made under oath whereas in an ordinary bankruptcy the bankrupt is examined under oath by the official receiver before the meeting of the creditors. In addition, the official receiver communicates his findings to the creditors, who in turn may follow them up if they see fit to inquire into the matter further. Those are the two points on which I wished to speak.

Senator DROUIN: Mr. Larose, do I understand that in your opinion subsection (6) of section 26 and sections 114 to 116, both inclusive, should be removed?

Mr. LAROSE: Yes.

Senator DROUIN: Is one of your reasons that if both these provisions remain—that is, these sections and the new Part X—they would create confusion because both are dealing with summary administration, and if you have two ways of going about it there would be confusion created in the minds of the creditors, the trustees and also the debtors?

Mr. LAROSE: That is quite possible, senator.

The ACTING CHAIRMAN: Are there any other questions of Mr. Larose?

We have reached the point now, honourable senators, at which we adjourn until December 6. In the meantime we shall, no doubt, receive a transcript of the proceedings this morning which we can look at at our leisure, and which will have as an appendix this further memorandum from the Toronto Board of Trade. At our next meeting we will expect Mr. MacDonald to have been good enough to have provided suggested amendments to sections 114 to 116, which will be available to us in the event that we decide to retain those sections in modified form as suggested by the Toronto Board of Trade.

Senator DROUIN: Could they also submit to us certain amendments to the new Part X if we repeal, as they request, sections 114 to 116?

The ACTING CHAIRMAN: With regard to the amendments to Part X, those suggested by the Credit Grantors Association of Canada, two or three of them, as Mr. MacDonald explained, seem to be more or less innocuous, in addition to that of the province of Manitoba. I wonder if the committee thinks it worth while to ask Mr. MacDonald to prepare those amendments to Part X which were suggested which might have the effect of increasing the cost of administration. I believe the committee feels that we do not want to increase the cost of administration.

Senator CROLL: I think it is a mistake; we are getting away from the principle and purpose of the act.

The ACTING CHAIRMAN: Well, just those amendments to Part X which are of administrative character, such as the keeping of separate registers. We would have everything that is suggested and then in addition we would have the representations made to us by the Montreal Board of Trade.

Senator DROUIN: Personally, I would leave it to their discretion, to suggest certain amendments that would not increase or complicate the cost of administration.

The ACTING CHAIRMAN: I take it that it is the view of the committee that we should not agree to the amendments to Part X which would increase the cost of administration, under Part X.

Senator CROLL: The Montreal Board of Trade will be notified?

The ACTING CHAIRMAN: Yes. Gentlemen, I think that our work has concluded for the time being.

The Committee thereupon adjourned.

APPENDIX

THE CLARKSON COMPANY LIMITED

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November 22, 1962.

Honourable SALTER HAYDEN, Q.C.,
Chairman,
Senate Committee on Banking and Finance,
Houses of Parliament,
Ottawa, Ontario.

Dear Sir:

On November 21 I had the privilege of appearing before your Committee as a member of the Bankruptcy Committee of the Board of Trade of Metropolitan Toronto, when the Board presented a brief on the subject of Bill S-2. Arising out of comments made at that hearing and out of the various briefs presented on that occasion, I felt impelled to take the liberty of writing to you setting out certain personal observations on the matter.

Abolition or retention of Sections 114-116 of the Bankruptcy Act

A good deal of the time of your Committee on November 21 was given over the consideration of the Summary Administration Section of the Act, Section 114-116. In its brief the Board of Trade strongly advocated retention of these sections with some rather important amendments thereto. On the other hand, The Credit Granters Association who presented a brief on that day and the Superintendent of Bankruptcy make strong representations that these sections of the Act be repealed.

On this subject I would first say that it is perhaps unfortunate that the repeal of Sections 114-116 and the proposals for a new Part X concerning the orderly payment of debts were included in the same Bill. Not unnaturally, a reader of the draft Bill might assume that there is a direct relationship between these two subjects and even that the new Part X is a substitute for Sections 114-116. From a practical standpoint this is most certainly not the case.

Persons who might avail themselves of Sections 114 to 116 are not concerned with paying their debts. They presumably are unable to do so and only wish to be rid of them by way of a discharge under the Bankruptcy Act. Persons who might use Part X are in an entirely different category. They wish to pay off their obligations and are only seeking some means of doing so in an orderly manner, free from pressure by creditors. The proposed Part X has nothing to do with Summary Administration. In my opinion Part X should receive consideration in the light of Part III of the Act, the Proposal sections, to which Part X is analogous.

Summary Administration Sections 114-116

I should like to comment briefly on some of the views expressed on November 21 on the subject of the Summary Administration sections.

In its review of this subject the Board of Trade carefully considered the advantages and disadvantages of these sections from the standpoint of both the debtor and the creditor. These provisions are nothing more than relatively economical way for a debtor who has only nominal assets to go through bankruptcy and obtain a discharge. The Board was of the opinion that there will likely always be individuals who, because of the size of their debts in relation to their assets and potential income, have no reasonable solution available to them except bankruptcy. If bankruptcy is necessary the Board could see no need to make it unnecessarily expensive, particularly where the debtor had few assets. The Summary Administration provisions have been of assistance to many people in this position and the Board could see no good reason to drop them. The Board's suggestion in this regard has been to merely amend these provisions to provide additional protection for creditors in those cases where the creditors involved ask for it. With the proposed amendments a bankruptcy proceeding under the Summary Administration provisions will, in my opinion, afford creditors every worthwhile protection that proceedings under the normal provisions of the Act would provide.

I have taken the liberty of enclosing a copy of an editorial written for the October 1962 issue of the Canadian Chartered Accountant magazine on the subject of bankruptcy act reform. I know that the members of the Board of Trade Bankruptcy Committee were in sympathy with the opinion expressed in the third paragraph thereof when they considered the Summary Administration provisions of the Act.

Part X—Orderly payment of debts

At the meeting on November 21 the Board of Trade of Metropolitan Toronto in its brief, saw fit to comment on the draft proposals for Part X in a most general and cautious manner. Considerably more study was recommended. The Credit Granters Association, on the other hand, presented a most comprehensive and detailed brief in which it greatly favoured the Part X proposals with certain amendments. I find myself in complete agreement with all of these amendments, with one major exception. I do believe that adoption of the suggestion on page 5 of the brief which would deprive the debtor, in respect of whom a consolidation order has been made, of the right to make an assignment in bankruptcy so long as the Order was not in default, would have a shocking result. Such a provision when combined with the proposed section allowing the Clerk to garnishee the debtor's future income and particularly in the absence of any provisions for the suspension of interest on creditors' claims could well result in a well-intentioned but unwary debtor being trapped in a treadmill of debt for years.

In considering the merits of introducing legislation such as the proposed Part X it must constantly be borne in mind that its whole purpose is to assist those people who wish to honour their obligations, not to evade them. Persons who are unable or are indisposed to pay their debts will not be affected by this new legislation in any way. They will just go bankrupt. Under the circumstances, Part X should be nothing more than a simplified extension of Part III—a simple, convenient and economical way for a hard pressed debtor to arrange to pay off his debts over a reasonable period of time.

Part X should not presuppose that it is dealing with dishonest or fraudulent or even unwilling debtors. This type will ordinarily never come under it, they will choose bankruptcy. Under the circumstances, I believe that the proposed

Part X should be simplified and should be designed to provide the following basic steps:

1. The administering officer should be the official receiver in each bankruptcy district. If more of these are required they should be appointed. (In many localities the official receiver and the Clerk of the Court are the same individual.)

2. The debtor should be required to pay a fee at the outset of the proceedings which should be not less than \$50 and probably not more than \$200.

3. The debtor should complete a sworn statement of his financial position and give an estimate of his current income.

4. The official receiver in consultation with the debtor should arrive at a mutually agreeable program of contributions to be made by the debtor toward settlement of his creditors' claims. The debtor must agree in writing to the proposed schedule of payments. If, at this point, he will not agree to a program which the official receiver believes to be reasonable in the circumstances, the whole matter should be dropped at once.

5. If agreement is reached, a copy of the sworn statement of affairs, list of creditors and the schedule of payments should be forwarded by registered mail to every creditor on the list, together with a notice of the time of a hearing to be held at the office of the Official Receiver to deal with the Proposal. Creditors should also receive a Proof of Claim form and a voting letter. The Official Receiver must allocate a reasonable time for each such meeting of creditors and state specifically at what hour the meeting is to begin. The practice of calling several meetings at the same location and at the same hour, which is presently followed in some bankruptcy jurisdictions, must not be allowed.

6. The debtor's plan must receive the approval of his creditors who should vote thereon in the same fashion as voting is carried out on a Proposal under Part III of the Act. This involves the plan being approved by creditors having 75% in dollar value of the outstanding claims and also a majority in the number of claims which are voted. The same rules as to eligibility for voting and the same procedure in effect including the use of voting letters to be submitted by creditors by mail with their proof of claim, should be followed under Part X.

7. When a meeting has been held the Official Receiver will be required to send a simple notice to each creditor on the list advising whether or not the plan has received the necessary approval of creditors. There should be no need for ratification of the plan by the Court but any creditor affected by the Proposal should have the right to appeal to the Court within 14 days of the mailing of the notice of the result of the creditors' decision on the plan.

8. Once a plan under Part X has gone into effect it should automatically be cancelled if the debtor at any time becomes in arrears by more than two of the payments required of him under the plan.

9. Secured creditors should be dealt with under Part X in exactly the same fashion as they are in other sections of the Bankruptcy Act.

The claims of the following persons should not be included in any plan under Part X:—

A landlord for rent

A municipal or other such body for taxes or rates

A public utility for power, water etc. (a telephone company for arrears should not be included in the above category)

All other creditors of the debtor, including the Crown, for income tax, etc., should be bound by the plan. The Crown may insist on receiving priority in distribution out of the fund although in my own view this is not warranted by anything other than "tradition".

10. The present provisions of the Bankruptcy Act should be changed where necessary to provide that all contributions made by a debtor acting in a plan under Part X should immediately vest in the creditors, who are entitled to receive distributions under the plan. In the event that the debtor should become bankrupt while funds still are in the hands of the Official Receiver, these funds should be distributed in accordance with the plan and should not be turned over to the trustee in bankruptcy.

11. The Official Receiver should be required to make distributions under the plan at any time when he holds an amount equal to not less than 10% of the total of the unsecured creditors registered under the plan. The Official Receiver would, however, be entitled to make more frequent distributions at his discretion.

12. Part X must provide that interest on the claims of unsecured creditors must terminate at the date of the mailing of the first notice of the plan to creditors.

13. There should be no provision enabling the Official Receiver to seize the debtor's assets or garnishee his income. The need for this should only arise if payments are not made on schedule under the plan. The automatic termination of the plan should require notice by ordinary mail to the creditors within 10 days of the date on which the plan goes into default. At this stage creditors would, of course, be entitled to seek any other remedy against a debtor, including executions, petitions in bankruptcy, etc.

14. The debtor must be free to make an assignment in bankruptcy at any time, whether or not he is operating within a plan under Part X and whether or not the plan is still in effect.

I believe that an analysis of the need by non-business debtors for a scheme to enable them to take care of their debts in an orderly manner, would indicate that procedures such as the foregoing would certainly not only meet the needs of the debtors but the interests of the business community. In these matters we are not dealing with dishonest or fraudulent persons and there is no apparent need for investigations or examinations beyond those which the creditors will have ordinarily carried out for their own account. If instances arise where creditors suspect that a debtor offering a composition under Part X is dealing dishonestly, they will always have available the right to refuse to approve the debtor's proposal and bring into play the other sections of the Bankruptcy Act.

I have discussed the basic principles of the proposals for a new part of the Act as set out above with certain of my colleagues on the Bankruptcy Committee of the Board of Trade and they have expressed their approval of them. There has been no opportunity to have these suggestions formally reviewed by the Board and they can, therefore, only be put forward as a personal expression of opinion.

Respectfully submitted,

J. L. BIDDELL.



First Session—Twenty-fifth Parliament

1962

THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING COMMITTEE

ON

BANKING AND COMMERCE

To whom was referred the Bill S-2, intituled: "An Act to amend the Bankruptcy Act".

The Honourable A. K. HUGESSEN, Acting Chairman

No. 4

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THURSDAY, DECEMBER 6, 1962

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WITNESSES:

MONTREAL BOARD OF TRADE

Mr. A. J. Wishart, F.C.I.S., Chairman, Mr. M. G. Greenblatt, Q.C., and
Mr. W. J. McQuillan, Q.C.

Mr. T. D. MacDonald, Assistant Deputy Minister, Department of Justice.

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1962

THE STANDING COMMITTEE ON BANKING AND COMMERCE

The Honourable Salter Adrian Hayden, *Chairman*

The Honourable Senators

Aseltine	Gouin	O'Leary (<i>Carleton</i>)
Baird	Hayden	Paterson
Beaubien (<i>Bedford</i>)	Higgins	Pearson
Beaubien (<i>Provencher</i>)	Horner	Pouliot
Bouffard	Howard	Power
*Brooks	Hugessen	Pratt
Burchill	Irvine	Reid
Campbell	Isnor	Robertson
Choquette	Kinley	Roebuck
Connolly (<i>Ottawa West</i>)	Lambert	Smith (<i>Kamloops</i>)
Crerar	Leonard	Taylor (<i>Norfolk</i>)
Croll	*Macdonald (<i>Brantford</i>)	Thorvaldson
Davies	McCutcheon	Turgeon
Dessureault	McKeen	Vaillancourt
Drouin	McLean	Vien
Emerson	Molson	Willis
Farris	Monette	Woodrow—50
Gershaw		

(Quorum 9)

*Ex officio member.

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Thursday, November 8, 1962:

Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Higgins, seconded by the Honourable Senator Hnatyshyn, for second reading of the Bill S-2, intituled: "An Act to amend the Bankruptcy Act".

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Brooks, P.C., moved, seconded by the Honourable Senator Choquette, that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative.

J. F. MacNEILL,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

THURSDAY, December 6, 1962.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 10.30 a.m.

Present: The Honourable Senators: Aseltine, Beaubien (*Bedford*), Brooks, Burchill, Choquette, Davies, Dessureault, Gershaw, Higgins, Hugessen, Irvine, Isnor, Lambert, Leonard, McCutcheon, McLean, Paterson, Power, Taylor (*Norfolk*), Thorvaldson, Turgeon, Willis and Woodrow—23.

In the absence of the Chairman and on motion of the Honourable Senator Brooks, the Honourable Senator Hugessen was elected Acting Chairman.

In attendance: Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel and the Official Reporters of the Senate.

Consideration of Bill S-2, An Act to amend the Bankruptcy Act was resumed.

Mr. A. J. Wishart, F.C.I.S., Chairman of the Montreal Board of Trade, read a brief to the Committee with respect to the above Bill.

Mr. W. J. McQuillan, Q.C., and Mr. M. G. Greenblatt, Q.C., of the Montreal Board of Trade were heard with respect to the said Bill.

Mr. T. D. MacDonald, Assistant Deputy Minister of Justice, was heard with respect to the brief submitted to the Committee.

After discussion it was resolved that further consideration of the Bill be postponed until Wednesday, December 12th, 1962, at 10.30 a.m.

At 12.30 p.m. the Committee adjourned until Wednesday, December 12th, 1962, at 10.30 a.m.

Attest.

A. Fortier,
Clerk of the Committee.

THE SENATE
STANDING COMMITTEE ON BANKING AND COMMERCE
EVIDENCE

OTTAWA, Thursday, December 6, 1962.

The Standing Committee on Banking and Commerce, to which was referred Bill S-2, to amend the Bankruptcy Act, resumed this day at 10.30 a.m.

The CLERK: Honourable senators, in the absence of the Chairman, Senator Hayden, is it your pleasure to elect an Acting Chairman?

Senator BROOKS: I move that Senator Hugessen act as Chairman.

Senator A. K. HUGESSEN (*Acting Chairman*) in the chair.

The ACTING CHAIRMAN: We will now proceed to consideration of Bill S-2, an Act to amend the Bankruptcy Act. Senators will recall the stage we had reached when we adjourned on Wednesday of last week. We had agreed to hear the representatives of the Montreal Board of Trade today, and they are here. We have also asked Mr. MacDonald in anticipation to prepare some suggested amendments in case we should wish to consider them in the light of our discussions of the last two days. I should add this, that Senator Croll spoke to me yesterday afternoon on behalf of himself and the chairman of this committee, both of whom, as you know, have taken a very active part in the discussions, and neither of them is able to be here this morning and on behalf of the chairman and himself he asked that we should defer our final consideration of this bill until a later date. So I think in the meantime we should hear the Montreal Board of Trade, and perhaps we can ask Mr. MacDonald to produce his suggested amendments to us, and we will have all that material before us when we next meet for perhaps our final consideration of the bill. Does that suit the convenience of the committee?

Hon. SENATORS: Agreed.

The ACTING CHAIRMAN: We have with us this morning representatives of the Montreal Board of Trade, Mr. A. J. Wishart, Chairman of the group, Mr. M. G. Greenblatt, Q.C., a member, Mr. W. J. McQuillan, Q.C., a member, and Mr. E. L. Tracey, Assistant General Manager. We also have Mr. T. D. MacDonald, Assistant Deputy Minister of the Department of Justice, and Mr. John Larose, Superintendent of Bankruptcy.

Is it the wish of the committee to hear now from the Montreal Board of Trade?

Hon. SENATORS: Agreed.

The ACTING CHAIRMAN: Will the Montreal Board of Trade indicate which of the members is going to address the committee.

Mr. WISHART: Mr. Chairman, I would like to present the brief to you and to the members of the Senate committee.

The ACTING CHAIRMAN: Copies of your brief have been distributed to the members of the committee, so would you proceed with your brief.

Mr. A. J. Wishart, F.C.I.S., Chairman, Bankruptcy Procedure Study Committee, Montreal Board of Trade: Mr. Chairman, and members of the committee, Mr. Donald M. Byers, President of the Montreal Board of Trade, has asked me to extend his sincere regrets on being unable to be present here today. Other commitments on behalf of the Board precluded his attendance.

Before proceeding with the Board's brief I wish to express our appreciation to the Banking and Commerce Committee for affording the Board the opportunity to make known its views and recommendations relative to Bill S-2, an Act to amend the Bankruptcy Act.

I am accompanied here today by members of the Board's Bankruptcy Procedure Committee and on their behalf I would like to present the Board's brief. With your consent, Mr. Chairman, I would suggest that if there are any questions they could be directed to Messrs. Greenblatt and McQuillan. May I introduce these two gentlemen, Mr. W. J. McQuillan, Q.C., and Mr. M. G. Greenblatt, Q.C. I think they can answer to better advantage any questions that you may direct in regard to the matters now being discussed.

Mr. Chairman and Honourable Members of the Standing Committee: In this brief, The Montreal Board of Trade will be referred to as the "Board" and Bill S-2 entitled "An Act to Amend the Bankruptcy Act" will be referred to as the "Bill". By the "Act" is meant the Bankruptcy Act.

I

SUMMARY ADMINISTRATION: The Board approves, without reserve, Sections 1 and 2 of the bill which have the effect of repealing in their entirety those sections in the Act which provide for the Summary Administration of small estates. In support of this position, the Board makes the following observations.

Summary Administration appeared in the Act for the first time in the revision of the Act in 1949. The intent and purpose of Summary Administration of small Estates was to reduce to the minimum the cost of administering small Estates in order that an individual debtor whose financial position dictated a recourse to the Act would not be prevented from availing himself of its provisions simply because his assets were of a value of \$500.00 or less. In order to accomplish this, many of the fundamental safeguards provided for creditors under the general provisions of the Act were eliminated for reasons of economy and with the following results.

- (a) The average saving in cost on the administration of a small Estate under Summary Administration as against administration on the same Estate under the general provisions of the Act is approximately \$40.00. The Board does not consider that this difference in cost would in any way deter or prevent a debtor from availing himself of the provisions of the Act if his financial position warrants such a recourse.
- (b) On grounds of economy, Notice of the Bankruptcy is not published in a local newspaper (Act, Section 114 d). The debtor who might otherwise struggle to meet his debts over a period of time is not deterred by any public stigma attached to being a Bankrupt.
- (c) No Inspectors are appointed with the following results.
 - 1. The Trustee is permitted to do alone all those things which under the general provisions of the Act he can only do with the specific authorization of the Inspectors (Section 114 (g)). Such powers in the Trustee can and have been abused to the prejudice of creditors.
 - 2. Without Inspectors, the creditors have no opportunity to properly inquire into the affairs of the debtor; for example, fraudulent transfers of property or assets, preferential payments to certain creditors, secreting of assets, etc.
- (d) The vast majority of Estates under Summary Administration originate by way of a debtor's assignment, so that the debtor in fact chooses a Trustee acceptable to him. In many cases, the relationship

between the debtor and the Trustee becomes that of a customer or client, and with all safeguards of supervision by creditors removed, this is a dangerous situation.

(e) Many dishonest debtors deliberately secrete or fail to disclose assets in order to qualify under "Summary Administration" where there is far less risk that their conduct will be looked into and dealt with as it deserves.

The Board has had the advantage of reading the Submission of its sister organization The Board of Trade of Metropolitan Toronto, and has noted its views that the provisions of "Summary Administration" should remain in the Act subject to repeal of certain sections. It is submitted that should the amendments urged by the Board of Trade of Metropolitan Toronto be adopted, then any real difference between administration under the general rules and "Summary Administration" disappears and the existence of Sections 114 and following, dealing with "Summary Administration", can no longer be justified in the Act.

The ACTING CHAIRMAN: Does the committee wish to discuss this first section before we proceed to deal with Part X, or shall we defer discussion of both subjects until we have heard the whole brief?

Senator THORVALDSON: I think we should hear the brief first.

Senator BROOKS: I think we ought to hear the whole brief.

The ACTING CHAIRMAN: Very well. Will you proceed, please, Mr. Wishart?

Mr. WISHART: Yes, Mr. Chairman.

PART X

ORDERLY PAYMENT OF DEBTS

A. GENERAL OBSERVATIONS: The Board considers that the intent and purpose of proposed Part X of the Act are twofold.

(a) To enable an individual debtor who works for wages, salary or commission and who is both desirous and able to pay his debts within a reasonable period of time to avail himself of legislation which would entitle him to deposit a fixed portion of his earnings each week or month with a competent authority. Distribution of funds would be made pro rata to his creditors at fixed intervals until his debts are discharged in full.

(b) To deter an individual debtor from choosing Bankruptcy as the only solution to his problem when, with planning and good intentions, he could discharge his debts over a period of time, and this without undue hardship.

With both these purposes, the Board concurs. However, the Board feels obliged to observe that it is not ready to subscribe to any general condemnation or criticism of debtors solely for the reason that they are not able to pay their debts; subjected to intense and persuasive campaigns extolling the ease and comfort of borrowing and credit purchasing, the individual who succumbs beyond his means to repay should not bear the blame alone. Those who lend and extend credit with the aid of such persuasives must be ready to share a fair portion of the blame if many individuals involve themselves beyond their ability to repay.

The Board would not subscribe to any legislation which might condemn an individual debtor to an indefinite period of hardship and deprivation because

of his inability to resist sales campaigns astutely designed to overcome his very resistance to borrowing or credit purchasing. The individual debtor, overwhelmed with debts, must have the same opportunity to avail himself of the provisions of the Act and, thus, make a new start, just as the merchant or trader who, through misfortune, poor judgment or miscalculation finds himself hopelessly insolvent. In this regard, no distinction is warranted or justified between the individual working for wages or commission and the trader or merchant in business for himself.

B. The Board does not approve of the incorporation into the Act of Part X "Orderly Payment of Debts" and for the following reasons:

1. The Act is an Act of the Parliament of Canada and applies everywhere in Canada. Under Section 198 of the Bill, Part X would apply only in those Provinces which specifically requested that Part X be made applicable in that Province. The result will undoubtedly be that, in some Provinces, Part X will be in effect while in others it would not. Further, under Section 174 (3) (c) of the Bill, any Province may designate certain classes of debts, at its choice, as not subject to Part X. This could lead to the greatest diversity in the different Provinces as to what debts are subject to Part X and what debts are not. While the hope, over the years, has been for a greater uniformity of legislation across Canada—for example, the efforts to bring into being a Uniform Companies Act—this provision in a Federal Statute of a Part which would extend only to Provinces which request its application and permits the Provinces to designate the classes of debts to which the Part would apply appears to be a serious retrograde step.
2. The Act already contains adequate provisions both for proposals and arrangements before bankruptcy which are in no way basically different from the Consolidation Order contemplated in the bill. The principal difference lies in that while the Act provides for the intervention of a licensed trustee, the bill provides for the intervention of a clerk of the provincial courts. A substantial difference in favour of the Act as it presently stands is that under a proposal or arrangement under the Act all the other provisions and recourses of the Act can be called upon (Act, Section 116) while the bill provides that none of the provisions of Parts I-IX apply to proceedings under Part X (Bill, Section 193 (3)).
3. The Board is not unaware that the experience of creditors with proposals and arrangements under the Act has left creditors less than enthusiastic. Care should be taken, however, not to conclude that the legislation is necessarily faulty or inadequate when the abuses are more properly attributable to faulty administration and the indifference of creditors to their own interests.

C. ALTERNATE SUGGESTION: The Board is aware that certain provinces, such as Manitoba, Ontario and Quebec have provincial acts, the scheme of which is not dissimilar from that envisaged in the bill. It is not to be presumed, however, that because these provincial acts are in effect that these provinces have necessarily found a wholly satisfactory solution to the problem.

It could be that the situation of an individual working for salary, wages or commission and whose debts do not exceed a certain fixed amount could be best handled at the provincial level through provincial courts, conforming to and meeting the varying situations in the different provinces.

The Board suggests consideration of the following alternative to the bill.

SUGGESTION: Section 25 of the Act does not permit a creditor to take a Petition in Bankruptcy against an individual who works for salary, wages or commission and whose earnings do not exceed \$2,500 a year. Section 26 of the Act permits such a debtor to make an assignment if he so chooses and if his debts total at least \$1,000.

The Board suggests that section 26 of the Act could be amended to provide that an individual working for wages, salary or commission and whose debts provable in bankruptcy do not exceed \$3,000 could make an assignment under the Act only with the permission of the Judge sitting in Bankruptcy and where the Judge is satisfied that the debtor cannot discharge his debts over a period of time not exceeding three years.

Where a Petition in Bankruptcy is filed against an individual who works for salary, wages or commission in excess of \$2,500 a year, the Judge sitting in Bankruptcy could exercise the discretion available to him in the Act (Section 21 (7)) and could refuse to grant a receiving order in those cases where debts provable in bankruptcy do not exceed \$3,000.

The Board considers that such an amendment would effectively make the situation of the wage earner with debts of \$3,000 or less, an "unoccupied field" concerning which the provinces could legislate "intra vires" the provinces, in such manner as might best suit their different interests and conditions. At the same time, it would not deprive such a debtor of availing himself of the Act, where in the opinion of the Judge in Bankruptcy there is no other reasonable solution for his problems.

Care could be taken that "provable debts" required to form the total of \$3,000 would not include loans from husband or wife, as the case may be, or obligations owing to relations within certain degrees.

In the opinion of the Board, this would preserve the act as an act of universal application throughout Canada while enabling the provinces to legislate in the small estate field in such manner as they may see fit.

Mr. Chairman, the brief is respectfully submitted by the Montreal Board of Trade.

THE ACTING CHAIRMAN: Thank you, Mr. Wishart. It was a very thoughtful and interesting brief. Mr. Wishart suggested that Mr. McQuillan and Mr. Greenblatt would be the members of the delegation who would answer questions.

Before the committee begins to ask questions I should, perhaps, say that Mr. McQuillan is a recognized expert in bankruptcy at the Bar of Montreal, and I have had the pleasure of sitting with him on the Bar council both of the Montreal Bar, and the provincial council for a couple of years.

Mr. MCQUILLAN: Thank you.

THE ACTING CHAIRMAN: I imagine, honourable senators, that our best procedure will be to start with questions on Part 1 of the brief dealing with the summary administration sections 1 and 2 of the bill, and later on to deal with Part X.

SENATOR ASELTINE: Do I understand, Mr. Chairman, that the brief is to the effect that the Montreal Board of Trade is in favour of repealing sections 114, 115 and 116, and when they are done away with they do not want to have any Part X added?

THE ACTING CHAIRMAN: Generally that seems to be the case.

Mr. MCQUILLAN: Yes.

SENATOR ASELTINE: You disagree with the Toronto Board then?

MR. GREENBLATT: We think the position is that if you accept the recommendations of the Toronto Board of Trade by introduction of this summary administration and the appointment of inspectors or some of the other safeguards in the interest of the creditors, there is no reason for having summary

administration of this because it becomes general administration under the Bankruptcy Act, so that it is either retaining summary administration as it is or eliminating summary administration, and such administration as is necessary in connection with new estates would be under the general provisions of the act which provide the creditors with all the necessary safeguards, the appointment of inspectors and all other aspects of the act.

Senator THORVALDSON: Consequently you agree completely with the position taken by the Canadian Bar Association?

Mr. GREENBLATT: Yes.

Senator THORVALDSON: And the Chief Justice of Quebec?

Mr. GREENBLATT: Entirely.

Senator LEONARD: I am a little puzzled. I have a little problem. I find it a bit of a problem to agree with the constitutional opinion that if the amendments were made, as suggested by the Montreal Board of Trade, that the wage earner with debts of \$3,000 or less would constitute an unoccupied field upon which the provinces could legislate. I am wondering what kind of constitutional opinion the Montreal Board of Trade has on that point.

Mr. MCQUILLAN: Senator, we made all the inquiries we could within the time at our disposal. We had no firm opinion from the top constitutional authorities we were able to contact, but at least there seems to be a fair area of doubt as to whether it can or cannot be done. We did explore the possibilities of delegation, and we are quite satisfied there is no possibility of delegation.

Senator LEONARD: I must admit I am disturbed by that.

Mr. GREENBLATT: Obviously there must be some justification for the unoccupied area theory, and in the province of Quebec we have what is known as the Lacombe law which legislates concerning matters of insolvency and bankruptcy, not necessarily bankruptcy, but insolvency of wage earners, et cetera.

Senator HIGGINS: You would like to have uniformity of laws in all things throughout Canada. Is that your suggestion? And therefore you should have the same uniformity in laws regarding bankruptcy?

Mr. MCQUILLAN: On matters concerning section 91 in the Act, certainly, I think, the general tendency of legislation has been as a whole to bring about as close a conformity or uniformity of legislation as we can.

Senator HIGGINS: In your brief you say:

The Board is aware that certain provinces, such as Manitoba, Ontario and Quebec have provincial acts, the scheme of which is not dissimilar from that envisaged in the bill. It is not to be presumed, however, that because these provincial acts are in effect that these provinces have necessarily found a wholly satisfactory solution to the problem.

I think it was Manitoba and Alberta which had in existence for ten years these acts that were found to be illegal. However, they must have found them satisfactory because they want this bill passed especially for themselves. Have they not the right to ask for that if they want it?

Mr. MCQUILLAN: I am taking it the assumption is that where there were such provincial acts there was satisfaction with that type of legislation?

Senator HIGGINS: Yes, they want the same act as they had all along. Their own acts have been declared *ultra vires*.

Mr. MCQUILLAN: I have had the advantage of reading transcriptions of the proceedings of previous sittings of this committee on this bill, and I have

noticed there has been a lot of praise for the old Lacombe law, as we in Quebec are pleased to hear. But, if the Lacombe law is actually necessary to the wage earner's problem, and the problem of the creditor of the wage earner, then it is difficult to explain why the province of Quebec consistently each year contributes 70 per cent of all summary administrations across Canada.

The ACTING CHAIRMAN: Under the Bankruptcy Act?

Mr. MCQUILLAN: Yes, under the Bankruptcy Act. In 1959 and 1960, which were the two years I was able to check, there were approximately 1,800 summary administrations throughout Canada, and of that number in excess of 1,500, or 70 to 72 per cent, were contributed by Quebec. The province of Ontario with its Small Debts Act in existence, contributed approximately 400 to 450, which is approximately 20 per cent.

With respect to summary administrations in the other eight provinces no problem exists whatsoever. In any one year there are not more than approximately 100 small administrations right across the other eight provinces. The problem is in Quebec and in Ontario, and we in Quebec, to our misfortune, contribute the bulk of those.

The ACTING CHAIRMAN: I think we have got away from the consideration of Part I of your brief. We are dealing with Part II of the brief at the moment, are we not?

Senator THORVALDSON: You are aware of the judgment of the Supreme Court of Canada that declared the provincial acts *ultra vires*?

Mr. MCQUILLAN: Yes.

Senator THORVALDSON: Alberta is another jurisdiction with orderly payment of debts legislation.

Mr. MCQUILLAN: Yes. I do not think it was ever put into practice but it was passed by the provincial legislature and then tested in their court of appeal and then declared by the Supreme Court of Canada to be *ultra vires* in that it infringed federal jurisdiction with respect to bankruptcy and insolvency. The thought here is if the Dominion Parliament does say: "We are not interested in this field", then the province can move into what is called the unoccupied field.

The ACTING CHAIRMAN: Our Law Clerk has placed before me the judgment of the Supreme Court in the matter of the Validity of the Orderly Payment of Debts Act, 1959 (Alta.). Perhaps I might quote a sentence or two from the judgment of Mr. Justice Locke:

As Parliament has dealt with the matter, the concluding portion of this judgment would be fatal to the appellant's contention, even if the subject of bankruptcy and insolvency were one in relation to which the province might legislate in the absence of legislation by the Dominion. But the language of section 91 is that the exclusive legislative power of the Parliament of Canada extends to all matters in relation to, *inter alia*, bankruptcy and insolvency, and the provinces are excluded from that field. As Lord Watson said in *Union Colliery -v- Bryden*:

The abstinence of the Dominion Parliament from legislating to the full limit of its power could not have the effect of transferring to any provincial legislature the legislative power which had been assigned to the Dominion by section 91 of the Act of 1867.

Mr. MCQUILLAN: That is perfectly correct, Mr. Chairman. The question is to what extent a provincial parliament might show the astuteness that Quebec would appear to have exercised in drafting the Lacombe law. The Lacombe law, in fact, does not speak of bankruptcy and insolvency as such. Where any system or plan for the orderly payment of debts is necessary then

whether by pith and substance it is bankruptcy is a nice question. Apparently, since 1904 Quebec has successfully avoided the question: Is an orderly payment of debts an infringement upon the jurisdiction of the federal Government with respect to bankruptcy and insolvency to the extent that it might be, by pith and substance, bankruptcy and insolvency legislation?

The ACTING CHAIRMAN: There has been no question in our courts as to the constitutionality of the Lacombe law?

Mr. MCQUILLAN: Not that I know of.

Mr. GREENBLATT: But those who drafted the act in Quebec—the lawyers in question—are quite certain that if the Lacombe law of the province of Quebec went before the Supreme Court it would be held to be *intra vires* the province. The fault of the Alberta act and the Manitoba act is in their approach, which was not the same approach that was followed in the province of Quebec in drafting, presenting and adopting the Lacombe law. In Alberta they attempted to interfere with the powers that belong rightfully to the federal authorities. In the province of Quebec, under the Lacombe law, there is no interference. It is a difference of approach and a difference of attitude, which if it were observed and followed in the provinces of Alberta and Manitoba might not have caused them any trouble.

The ACTING CHAIRMAN: But your brief does not quite say that, does it, Mr. Greenblatt. Your brief rather implies that if the Dominion left the field under \$3,000 free that then the provinces could step in?

Mr. GREENBLATT: Yes, we take that position, too.

The ACTING CHAIRMAN: That would be against this judgment as I read it, would it not?

Senator LEONARD: The brief rather leaves to the judge the question of constitutionality and jurisdiction; as to whether or not a debtor should be under provincial legislation. It seems to me that that is going too far, to leave it to a judge to decide the relative boundaries of jurisdiction in a matter of this kind. I think the jurisdiction has to stand or fall, regardless of what a judge may think in dealing with the affairs of a man and his debts as they come before him.

Mr. GREENBLATT: We did not intend that the suggestion be interpreted that way. We simply indicated that a debtor whose debts are less than \$3,000 should have his affairs dealt with by the province. If his debts are less than \$3,000 then with the consent of a judge he would be out of the occupied field. He can only have a petition in bankruptcy made against him in the discretion of the judge. The judge is not determining whether he has jurisdiction or not. The judge is only determining whether in the case of a debtor who is saddled with debts of less than \$3,000 there is any hope of his being able to discharge those debts over a reasonable period of time. If the judge thinks he can then it is not a question of constitutional rights; it is a question of giving this debtor, by way of assignment or by way of receiving order under a petition in bankruptcy, a chance to liquidate his assets that are placed in the hands of a trustee, and to apply for his discharge if he is entitled to his discharge.

Senator THORVALDSON: I just want to make this comment, that I think the whole brief is extraordinarily concise and clear, but I doubt very much whether the Department of Justice would agree with the second part of it from the point of view of the law. That is the problem, as I see it, with respect to the second part. Of course, the recommendations in the second part are, of course, contrary to the views of the Toronto Board of Trade.

Mr. GREENBLATT: Yes. Apropos your remarks, we do not want the suggestion of the unoccupied field to cloud the thinking or division of the senators we have had the privilege of meeting this morning. The unoccupied field suggestion is only an alternative. We feel it is not necessary to have that alternative

proposal. Small debtors could be well protected by the act as it is if the provisions with respect to summary administrations were removed. We think that summary administrations should be under the jurisdiction of a trustee and the supervision of inspectors. That is, with respect to the orderly payment of debts any debtor, whether he is a wage earner or otherwise, who wants to pay his creditors and wants an extension of time in which to pay them 100 cents in the dollar, with or without interest, over a period of time, has that provision in the Bankruptcy Act at the present time. He does not have to have a trustee in bankruptcy. He has not the stigma of bankruptcy. He comes under the provisions of section 27 of the Bankruptcy Act. He can then undertake to pay 100 cents, 75 cents or 50 cents in the dollar, with or without interest, providing that arrangement is satisfactory to the majority of his creditors at a meeting, and provided it is ratified by a judge.

So you have all the machinery right now in the act for the protection of small debtors as well as large debtors. The alternative may not be necessary, except that if an alternative is wanted for the benefit of certain debtors and in certain provinces, the suggestion is available.

Senator ISNOR: Mr. Wishart, would you turn to page 2, subsection (c) headed: No Inspectors are appointed, with the following results.

1. The Trustee is permitted to do alone all those things which under the general provisions of the Act he can only do with the specific authorization of the Inspectors (Section 114 (g)). Such powers in the Trustee can and have been abused to the prejudice of creditors.

Would you enlarge on those last few words: "have been abused to the prejudice of creditors." I ask that because you stated, if I remember rightly, that 70 per cent of the cases occurred in the province of Quebec.

Mr. WISHART: I am going to ask Mr. McQuillan to deal with that, as he has much more knowledge of it than I have.

Mr. MCQUILLAN: How would you have me deal with it? As to the number of summary bankruptcies in Quebec or just the abuse?

Senator ISNOR: The abuse.

Mr. MCQUILLAN: Under Section 10 of the Act, subsection (2).

Senator ISNOR: Are we dealing with Part X?

The ACTING CHAIRMAN: Mr. McQuillan is dealing with Section 10 of the Bankruptcy Act itself.

Mr. MCQUILLAN: That is General Administration. There is listed in Section 10 a series of decisions which the trustee may make, but he may do them only with the permission of the inspectors and the permission, says subsection (2) must be specific and cannot be general. So, if the trustee under the general provisions of the act, wants to sell assets, one of the things he normally does as trustee, he must have specific authority to do that. Under the Summary Administration, he asks no one, he makes the decision alone. If the trustee has a property where there apparently would appear not to be an equity, he is entitled to deal with it alone, without discussion with anyone, even the largest interested creditors. There is no control over him at all. One must bear in mind, I would say, 98 per cent of all summary administrations originated by the debtor taking the initiative and going to a trustee of his choice. He in effect is going to his own client or to his solicitor, who is named trustee. The trustee undertakes, for an arranged fee, with that debtor, to do a certain job; that is, to see that those debts are discharged and that the debtor obtains his personal discharge in bankruptcy. I submit that that relationship is a dangerous relationship, particularly when you deprive creditors of the right even to have an inspector to see what is going on.

Mr. GREENBLATT: There is a loyalty to the debtor and not a loyalty to the creditors or representatives of the creditors at all. That is it, in essence.

Senator ISNOR: I wanted that cleared up.

Mr. MCQUILLAN: May I make a general comment, which has not been made so far? In 1949, Summary Administration appeared for the very first time in our act. There is no question as to the source of the section. That section in our act is actually section 129 of the English Bankruptcy Act. The error, if I may be permitted to say so, that the legislature may have made in 1949 is that, in taking the principle of quick administration of a small estate from the English Bankruptcy Act, they did not go all the way.

Under the English Bankruptcy Act the official receiver, who is the paid employee under the Bankruptcy Act, is the trustee of all small estates. Our act did not want to infringe upon the ordinary system of licensed trustees, which has been in effect since 1932, so they dropped that, they stopped at naming the official receiver as automatically the trustee in all small estates and left the ordinary licensed trustee to take over those small estates.

The English act was careful to say that, if the creditors decide that this small estate is to be administered by a trustee other than the official receiver, then the trustee comes under the General Provisions of the Bankruptcy Act in England.

That means there is an outside trustee, other than the official receiver who is an employee paid by the court.

Then the act says that the estate, even though it is a small estate, must be administered under the General Provisions of the English act. We went part way and did not go far enough and not going far enough is, I submit, our problem.

Senator THORVALDSON: May I ask, in consequence of Senator Isnor's question in regard to these abuses, could you give figures as to how many of these estates were handled, say, in the province of Quebec in 1961 or 1960 or in recent years—just to give us an idea?

Mr. MCQUILLAN: I think I can give you the precise figure for 1959 and 1960. I do not have the figure for 1961.

In the year 1959, throughout Canada there were 1,810 estates administered under Summary Administration. Of these, 1,318 or 72 per cent originated in the province of Quebec. Ontario contributed 405; and the balance of 87 was scattered throughout the other eight provinces of Canada.

In 1960, there was a total of 1,825 estates under Summary Administration throughout Canada. In that year the province of Quebec contributed 1,231 or 71 per cent. Ontario contributed 493; and the balance of 101 was scattered throughout the other eight provinces.

I do not have figures for 1961 but I would guess that they are approximately the same.

Senator BROOKS: Could you give us the average amounts involved?

Mr. MCQUILLAN: I can do that, too, Senator, in a moment.

Mr. GREENBLATT: Are you thinking in terms of the total amount of liabilities involved or in terms of the total amount of assets?

Senator BROOKS: Both, as a matter of fact.

Mr. MCQUILLAN: Somewhere in my papers I have later figures, but these may be a guide, they are for 1957.

In the year 1957 the total number of small administrations was 2,056. In that year Quebec contributed 1,705, Ontario contributed 286. In that year, the total assets declared by debtors under Summary Administration in these 2,056 was \$2,992,672. The liabilities as estimated by the debtor were \$14,165,575.

My recollection is that the figures in 1958 and 1959 are approximately the same.

Mr. GREENBLATT: Of course, there has been no realization for the creditors at all in those estates.

Senator THORVALDSON: Practically everything would go to the trustee?

Mr. GREENBLATT: To cover his expenses.

Senator HIGGINS: You said there at one time that any small debtor could avail of the Bankruptcy Act, did you not?

Mr. GREENBLATT: Yes.

Senator HIGGINS: Is that really correct?

Mr. GREENBLATT: Yes, he could.

Senator HIGGINS: Where the debtor has less than \$1,000 has he any chance at all? He cannot avail of it and he cannot make an assignment.

Mr. GREENBLATT: He must have a thousand dollars.

Senator HIGGINS: Then every small debtor cannot avail himself of the act?

Mr. MCQUILLAN: With that very small exception.

Senator HIGGINS: He is a small debtor, isn't he? He is a wanderer, he is wandering through the morass of finance and does not know what he can do?

Senator THORVALDSON: You are now back to the other field, are you not?

Senator HIGGINS: That is right. He cannot avail himself of the act, though.

Senator LEONARD: Mr. Chairman, may I ask a question of the representatives here? On page three, dealing with the amendments suggested by the Board of Trade of Metropolitan Toronto, the brief says that if those amendments were adopted, then any real difference between administration under the general rules and "summary administration" disappears. I wonder if they can tell us what differences are still left if the amendments suggested by the Board of Trade of Metropolitan Toronto were adopted? What are the real differences?

Mr. GREENBLATT: There would be one main difference, and that is the aspect of publicity.

Senator LEONARD: Advertising?

Mr. GREENBLATT: There is no advertising. If we just amend summary administration as suggested by the Board of Trade of Toronto we would have the benefit of supervision of the work of the trustee by inspectors for the benefit of creditors. That is a very good feature, and that is what we have now under the general administration of the act.

Senator LEONARD: That is a resemblance?

Mr. GREENBLATT: That is a resemblance. The one thing that could be retained that we now have under summary administration, even with the amendment, is the fact that the debtor who has made an assignment in bankruptcy would not be publicized, would not appear officially in the *Canada Gazette* or in an English or French newspaper. In other words, the stigma of bankruptcy is still removed.

Senator LEONARD: He avoids that publicity.

Mr. GREENBLATT: He avoids that publicity.

Senator LEONARD: That of course means a saving in cost.

Mr. GREENBLATT: No, not at all. The total difference in cost between summary administration and general administration is only a difference of about \$35.

The ACTING CHAIRMAN: I wonder whether you could enlarge on that, Mr. Greenblatt. You say on the first page that the difference in cost is approximately \$40. Where does that come in, in the advertisements?

Mr. GREENBLATT: In the advertisements.

Mr. MCQUILLAN: First of all, there is no bond under the summary administration, whereas there is a bond under general administration. That is a saving in cost of \$10. There is no publication in a local newspaper. That averaged \$15 or \$17; and the third—

Senator LEONARD: The *Gazette*?

Mr. MCQUILLAN: No, the *Gazette* must be published under summary administration. Under general administration there is a bond, and publication in the local newspapers. Under ordinary administration, general administration, the notices have to be sent out by registered mail. Under summary administration, they are sent out by ordinary mail. I took an average of fifty creditors, and on that basis it works out at \$10, that is, twenty cents each.

I might mention, Senator, that two years ago at the request of the Department of Justice, a short submission was made, in which I had some part in drafting. At that time we went to a certain trustee's office, and with his co-operation we impartially chose a group of small estates administered under general administration of the act and a group under summary administration of the act, and the actual difference dollarwise in expense between a general administration and an ordinary administration was \$38.78.

The ACTING CHAIRMAN: What was the difference in what the creditors received as against what the trustee received?

Mr. MCQUILLAN: I would not care to estimate.

Mr. WISHART: That is a very touchy point. Probably he got nothing.

The ACTING CHAIRMAN: Are there any further questions with regard to Part I of this brief on summary administration? I think it has been very well covered by the witnesses, but if there are no further questions, are there any questions on Part II? I was going to suggest that perhaps when we finish with Part II, since Part II suggests quite a radical change in the way of dealing with this matter, we might hear from Mr. MacDonald. He has probably had to consider this in the past. Are there any further questions on Part II of the brief with regard to Part X of the bill?

Senator THORVALDSON: I would like to indicate to these gentlemen the dilemma that some of us are in, for instance, in Manitoba and Alberta. Orderly payment of debts in Manitoba came into effect during the depression years of 1932 and 1933, and I have never heard of any abuses in connection with that. I think I can say the same in the case of Alberta. The people of Quebec seem to be better placed than we are, because they still have the Lacombe law, which has approximately the same effect as the former acts of Manitoba and Alberta.

Senator ASELTINE: Has the Lacombe law ever been tested?

Senator THORVALDSON: Apparently not. I think Mr. McQuillan said a moment ago that it was ultra vires these provinces. Consequently, I want to say that these provinces, as you probably know, have requested this legislation because they do desire to have the benefit of their former acts, and that is the reason that these amendments are being proposed here.

Mr. MCQUILLAN: I think I can speak for the Montreal Board of Trade, that certainly it is not our intention to oppose strenuously the form of Part X of the act. The only comment we thought might be justified was that if it might be done within the general act of bankruptcy as it is, it might be wise to do so. The only part of the act about which we might

feel perhaps a little keenly is if in the form of Part X in which it would appear in the Bankruptcy Act, it might have had the effect of putting a debtor on a treadmill for an indefinite period of time. That is something that I think as socially conscious lawyers we should not subscribe to. So that as long as any form of Part X of the act might retain for the debtor his right to use the general provisions of the Bankruptcy Act if his position warrants it, then a plan of orderly debts, whether it is done by the provinces within an unoccupied field or under part of the act, we certainly, from our point of view, would not take any strong resistance to such a point.

Senator BROOKS: Do you suggest a ten year period?

Mr. MCQUILLAN: A three-year limit might be a reasonable period of time, if the debtor is prepared with good intentions to go through a certain amount of deprivation and control; that seems reasonable. If he cannot possibly meet all these obligations over a period of less than five or ten years, he would probably be in the position where he could not discharge those obligations. Under the Lacombe law it is an indefinite period. I have not studied the actual relationship between the function of the Lacombe law and the rather massive proportion of summary administrations in Quebec, but it would appear that the Lacombe law, in so far as the debtor is concerned, is not a wholly satisfactory solution or we would not have this tremendous quantity of summary administrations under the Bankruptcy Act.

Mr. WISHART: Under Part X as drafted the three-year period may be extended with the consent of the creditors or with the approval of the court. One very bad feature of Part X—to provide extension of payment of the wage earner's debts—is that the draft act as it stands would allow high interest rates to continue to be added to the indebtedness, so that the debtor has to make an attempt not only to pay off the hundred cents on the dollar over three years, but to continue to pay the accruing interest rates on some of his contracts, which may be rather onerous.

Senator ISNOR: Could you put the interest in terms of percentage?

Mr. WISHART: If the rate of some of the loan companies on small loans is two per cent a month, that is, twenty-four per cent a year, and the earner goes on paying for three or four or five or six years, under Part X he is going to go on paying for the rest of his life.

Senator DAVIES: May I ask a question? Not being a lawyer, I should like to know who discharges a bankrupt when he is to be discharged honourably?

Mr. WISHART: A judge sitting in bankruptcy. After a notice of the application by the debtor of his discharge has been sent to all the creditors, creditors may appear on the date fixed for the hearing of the application to make their opposition, and the judge determines whether the debtor should be discharged; or his discharge could be suspended for a period of six months or two years; or he could be discharged subject to paying twenty-five cents or fifty cents or seventy-five cents on the dollar for a period of time to his unsatisfied creditors.

Senator DAVIES: Debtors are sometimes discharged from bankruptcy before their debts are paid, are they not?

Mr. GREENBLATT: Oh, yes.

Senator DAVIES: And if a man is discharged is he entitled to start into business again?

Mr. GREENBLATT: Definitely. The discharge is asked for after the trustee has realized on such assets as the debtor may have had. If he paid nothing, or ten cents or twenty cents on the dollar, following the liquidation of the assets of the estate by the trustee or even during the period of the liquidation, he may proceed to apply for discharge and have all his debts, the bulk of them, except debts that have the character of necessities of life, wiped out completely.

Senator HIGGINS: Mr. Chairman, before we finish up I wonder if we could have Mr. MacDonald come again to explain this different procedure. We would like to have an explanation from him on it.

The ACTING CHAIRMAN: About the suggestion with respect to Part X?

Senator HIGGINS: Yes.

The ACTING CHAIRMAN: I suggested that a little time ago, and if there are no further questions to be asked of this delegation then we can hear from Mr. MacDonald.

Senator ISNOR: Mr. Chairman, I would like to have it clearly defined, that is, the stand of the Montreal Board of Trade defined, as to whether they feel that such legislation as this should be uniform across Canada, in other words do they approve of eliminating the provinces of Alberta and Manitoba from the special provisions?

Mr. GREENBLATT: Senator Isnor, if I understand your question correctly, the general theory of the Montreal Board of Trade is this, that any legislation dealing with bankruptcy should be uniform throughout and made applicable throughout Canada, that is, whatever legislation you are introducing should be made applicable to all provinces.

Senator ISNOR: Thank you very much. That satisfies me.

The ACTING CHAIRMAN: If there are no further questions I think I should thank the representatives of the Montreal Board of Trade, first of all for the brief they have submitted to us and secondly for the very interesting and exhaustive way in which they have explained it to us. Thank you, gentlemen.

Mr. WISHART: Mr. Chairman, we too wish to express our appreciation at the hearing that was given to us, enabling us to come here and to be listened to. Thank you very much.

Senator ASELTINE: We are glad to see you any time.

The ACTING CHAIRMAN: Mr. MacDonald, I think the committee would be glad to hear you particularly on the second part of the Montreal Board of Trade suggestion, their alternative suggestion, as to how to deal with what Part X purports to deal with. Would you care to say anything on that now, or would you rather think it over and reserve your comments?

Mr. MACDONALD: Mr. Chairman, if the committee would like me to do so I think I would be prepared to make a short comment on it now.

The ACTING CHAIRMAN: I am sure the committee will be glad to hear you. Will you come forward to my table and make your submission?

Mr. T. D. MacDonald, Assistant Deputy Minister, Department of Justice: Mr. Chairman and honourable senators, as I understand it, the point to which I am expected to address myself at this meeting is that which arises in connection with the alternative suggestion. This is referred to on page 6 and 7 of the brief. My understanding is that the alternative scheme proposed is that in cases where the debts do not exceed \$3,000 it should be put in the power of the court to prevent a debtor from himself making an assignment or his creditors putting him into bankruptcy, and that the debtor placed in that position could then fall under a provincial regime of legislation.

Now I would not put myself forward as an expert in constitutional law and anyhow I am not prepared to discuss the constitutional aspects in detail this morning, but the first comment that suggests itself is that this scheme would depend upon there being an unoccupied field in which the province could legislate, and on that score the chairman read you this morning a passage from the judgment of the Supreme Court of Canada in the reference of the Alberta Orderly Payment of Debts legislation which would appear to

raise at least some question of the existence of such an unoccupied field open to provincial legislation.

In the alternative perhaps the suggestion is also this, that the debtor whose debts did not exceed \$3,000 and who was prevented from coming under an assignment or the petition provisions of the act, was prevented, in other words, from going into bankruptcy, might still come under the proposal provisions of the act. There I would remind you that the proposal provisions of the Bankruptcy Act are considerably different in character than the provisions contained in Part X. They are more complicated, they are more costly, they involve, among other things, a formal reference to the court for the approval of the proposal put forward by the debtor after it has first been passed upon at a meeting of the creditors. As for the point about putting the debtor on a treadmill under Part X, I think I should make a brief comment on that. It is the debtor who makes the proposal for the consolidation order himself.

The ACTING CHAIRMAN: He has to originate it?

Mr. MACDONALD: He has to originate it and he does so, I suggest, upon a free election as to whether he wishes to enter into an arrangement under which he will eventually pay off all his debts or whether he seeks the ordinary provisions, whether he seeks to come under the ordinary provisions of the Bankruptcy Act. In other words, if a debtor says to himself, "I don't want an arrangement under Part X because it would take me too long to pay off my debts"—

The ACTING CHAIRMAN: Or, "The interest is too high."

Mr. MACDONALD: "The interest is too high," or, "I will never be able to pay off my debts," then he is not precluded from coming under the ordinary provisions of the Bankruptcy Act—in short, going into bankruptcy. So I cannot see that the effect of Part X is to place him upon a treadmill. The effect of Part X is to offer the alternative procedure to that class of debtor who say, "I prefer, rather than going into bankruptcy, to arrange with my creditors for the eventual payment in full of all my debts."

Senator BROOKS: Supposing he makes that arrangement with his creditors and then finds that he cannot pay his debts, can he still take advantage of the Bankruptcy Act?

Mr. MACDONALD: Yes, Senator Brooks, he can; so that even if he should consider himself inadvertently to have got upon a treadmill he can get off it any time, and into the ordinary provisions of the Bankruptcy Act.

The ACTING CHAIRMAN: I shall not ask you to comment on Part I of the brief of the Montreal Board of Trade because, in substance, they fully support the proposal in the bill on which you have already given evidence, to eliminate the summary provisions.

Mr. MACDONALD: Yes, Mr. Chairman.

The ACTING CHAIRMAN: Is there anything you wish to add, in view of what the Montreal Board of Trade has said?

Mr. MACDONALD: I do not think so, Mr. Chairman. A certain duty was placed upon Mr. Larose and myself at the last meeting, and you will no doubt wish us to carry that out in due course. Thank you.

The ACTING CHAIRMAN: Any further questions to Mr. MacDonald?

Mr. GREENBLATT: Mr. Chairman, might I say a word, in view of what Mr. MacDonald has just said?

The ACTING CHAIRMAN: Certainly, Mr. Greenblatt.

Mr. GREENBLATT: Mr. Chairman, I am not taking issue with Mr. MacDonald on the points that he has raised. I am glad to have had the benefit of Mr. MacDonald's views this morning, but since Mr. MacDonald is the main architect of the bill, or one of those assisting in the drafting of the bill, perhaps we should mention something that appears inconsistent to us in it. Apropos the suggestion and the statement you have made before the senators this morning—that any time before a small debtor and wage earner has taken advantage of the consolidation order he may avail himself of the general provisions of the Bankruptcy Act; or if there has been a consolidation order, he may abandon that and then make use of the Bankruptcy Act; he can either make a proposal or compromise or extension, or plainly go into bankruptcy—we do not see that, if we take a good look at section 193(2) and (3) of the draft. Subsection 2 reads:

“The fact that proceedings have been taken under this Part”—

—that is, under part X—

“shall not prevent the taking of proceedings by or against the debtor under the provisions of any other Part of this Act”.

—meaning the Bankruptcy Act. The right to make a compromise with his creditors, which is section 27 of the Bankruptcy Act, falls into other parts of the act; the right to make a petition in bankruptcy falls into other parts of the act; the right for him to make an assignment in bankruptcy falls into other parts of the act. This seems to imply that he is not prevented from taking advantage of the other provisions of the Bankruptcy Act, nor are creditors prevented from taking proceedings against him. But we go on reading in that same section, section 193, subsection (3), which reads as follows:

“None of the provisions of Parts I to IX of this Act”—

—that is the Bankruptcy Act, dealing with proposals and assignments in bankruptcy and petitions in bankruptcy, and receiving orders—

“None of the provisions of Parts I to IX of this Act apply to proceedings under this Part.”

Therefore, we think that is something that ought to be cleared up, so that it is definite and clear, in the event Parliament does decide to adopt Part X, with which we are not very happy. Nevertheless, it is very clear that a debtor who has had a consolidation order against him, at any time he finds the consolidation order is a burden he would have the same right as any other merchant or corporation or trader to avail himself of the provisions of the Bankruptcy Act and to make a compromise or go into bankruptcy.

Senator LEONARD: Do you think subsections (2) and (3) have the same effect?

Mr. GREENBLATT: They are confusing. Probably it was not intended that should be so, but it would be very difficult for a judge to know what to do in reading one or the other.

Senator THORVALDSON: I find it hard to believe a court could construe these subsections in the way you do. The court would have to say that to subsection (2) the legislature said, “Yes,” and that to subsection (3) the legislature said, “No.” It is rather hard to believe a court would put that construction on those two subsections.

The ACTING CHAIRMAN: It may perhaps be simpler if we inverted the paragraph and perhaps said:

“No proceedings under this Part shall be subject to the provisions of Parts I to IX of the Act”—

—meaning that the proceedings under Part X are quite distinct from the proceedings under Parts I to IX. Would not that perhaps make it clearer?

Mr. MACDONALD: Well, I should like to say now, Mr. Chairman, that it is with great respect that I comment on any of the submissions of the Montreal Board of Trade, because they have been in the van of suggesting any improvements that might be made in the Bankruptcy Act drafting and administration. However, I cannot say that I agree with my colleague, Mr. Greenblatt, on the construction that he says might be put on section 193(2) and (3).

It seems to me that subsection (2) states categorically,

"The fact that proceedings have been taken under this Part shall not prevent the taking of proceedings by or against the debtor under the provisions of any other Part of this Act."

Then we come to subsection (3), which has a different purpose. It simply says:

None of the provisions of Parts I to IX of this Act apply to proceedings under this Part.

But if the debtor takes proceedings under the other parts, or if his creditors serve a petition against him under those parts, then, of course, it is not a proceeding under this part, under Part X, and subsection (3) has no application. Subsection (3) simply says that where you are looking only at a proceeding under Part X it is self-contained, and you do not go to the other parts of the act for procedural or administrative provisions.

Mr. GREENBLATT: It says, "None of the 'provisions' of Parts I to IX," and does not say, "None of the 'proceedings'." The term "provisions" is all-inclusive, and means anything under the Bankruptcy Act as it stands now cannot be employed with respect to any debtor who is now availing himself of Part X of the act.

Mr. MACDONALD: I suggest, Mr. Chairman, it really does not say that at all. All it says is that none of the provisions of Parts I to IX shall apply to any proceedings under this part, and not to a debtor who is, for the time being, under that part, if that debtor does go under Parts I to IX.

Senator THORVALDSON: Mr. Chairman, there is very little difference between us on this thing, and I wonder if it is worth while spending too much time on it. After all, the Department of Justice has drafted this bill and is willing to take the responsibility for matters of this kind. Supposing the courts found there was something wrong with this legislation, it could very easily be put right.

Mr. MCQUILLAN: Would the department consider having subsection (3) of section 193 read: "Except as herein provided in subsection (2), none of the other provisions of Parts I to IX of the act shall apply to proceedings under this Part."? Then, I think you could say what the bill intends to say.

Mr. MACDONALD: I certainly do not want to be stubborn, Mr. Chairman, but frankly I am afraid of extemporaneous provisions of this kind in a bill of this complexity. I see subsections (2) and (3) before me; it seems to me they are clear. While I certainly would not say, Mr. McQuillan, that your proposal would necessarily change them, I must say I would have to look at it further to satisfy myself it would not.

Senator LEONARD: May I suggest we leave it to our Law Clerk to give us his views on that.

The ACTING CHAIRMAN: Mr. MacDonald will give us certain suggestions at the next sitting anyway. We can consider that to see whether there is confusion and if there is confusion to clear it up. It is merely a question of language anyway.

Honourable senators, unless anybody has any other suggestion I think this would be a suitable time to adjourn, because we have come to the conclusion

of what we can usefully consider for the moment under this legislation. We asked Mr. MacDonald at our last meeting to make certain suggestions for changes both in Part I and Part II which we might consider. As I said at the opening, the Chairman and Senator Croll would both like to be present when we finally dispose of this bill, and furthermore I think it will be helpful to members of the committee if, before we meet for our next sitting, the proceedings of this meeting in printed form are before us. Shall we then adjourn?

Senator ISNOR: Before we adjourn, have you received any other communications?

The ACTING CHAIRMAN: The Clerk informs me we have no further notices as far as he knows. Were you thinking there might be, Senator Isnor?

Senator ISNOR: I thought there might be. However I can mention it later.

The ACTING CHAIRMAN: From some association?

Senator ISNOR: Later on I shall refer to it.

The ACTING CHAIRMAN: If you know of any other source who wishes to make representations, if you would get in touch with them and tell them we will be glad to hear them; but it must be fairly soon.

Mr. GREENBLATT: A telegram was sent to Senator Hayden and to the committee by the National Associated Women's Wear Bureau, an association representing eight hundred manufacturers in the needle trade throughout Canada. I happen to be the attorney of that association and we advised the National Associated Women's Wear Bureau that the Montreal Board of Trade were working on a submission, and I have acquainted the members of the board of that Bureau with the contents of our brief and they are satisfied that the representations made by the Montreal Board of Trade concur with their views.

The ACTING CHAIRMAN: So they don't need to come separately?

Mr. GREENBLATT: That's right.

The ACTING CHAIRMAN: I think the only question then is to fix a date for resumption of the discussion on this bill. Shall I say Wednesday next?

Senator BROOKS: I would say not later than Wednesday.

Senator ASELTINE: At the call of the Chair.

Senator THORVALDSON: Why not make it definitely Wednesday next?

Senator ASELTINE: That might be too late. We might be adjourning next week end.

Senator BROOKS: Wednesday next.

The ACTING CHAIRMAN: Adjourned to Wednesday next.

The committee thereupon adjourned its consideration of Bill S-2 until Wednesday, December 12, 1962.



First Session—Twenty-fifth Parliament

1962

THE SENATE OF CANADA
PROCEEDINGS
OF THE
STANDING COMMITTEE ON
BANKING AND COMMERCE

To whom was referred the Bill S-2, intituled: "An Act to amend the Bankruptcy Act".

The Honourable SALTER A. HAYDEN, Chairman

No. 5

WEDNESDAY, DECEMBER 12, 1962

WITNESSES:

Mr. T. D. MacDonald, Assistant Deputy Minister of Justice and Mr. John Larose, Superintendent of Bankruptcy, Department of Justice.

REPORT OF THE COMMITTEE

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1962

THE STANDING COMMITTEE ON BANKING AND COMMERCE

The Honourable Salter Adrian Hayden, *Chairman*

The Honourable Senators

Aseltine	Gouin	Paterson
Baird	Hayden	Pearson
Beaubien (<i>Bedford</i>)	Higgins	Pouliot
Beaubien (<i>Provencher</i>)	Horner	Power
Bouffard	Howard	Pratt
*Brooks	Hugessen	Reid
Burchill	Irvine	Robertson
Campbell	Isnor	Roebuck
Choquette	Kinley	Smith (<i>Kamloops</i>)
Connolly (<i>Ottawa West</i>)	Lambert	Taylor (<i>Norfolk</i>)
Crerar	Leonard	Thorvaldson
Croll	*Macdonald (<i>Brantford</i>)	Turgeon
Davies	McCutcheon	Vaillancourt
Dessureault	McKeen	Vien
Drouin	McLean	Willis
Emerson	Molson	Woodrow—50
Farris	Monette	
Gershaw	O'Leary (<i>Carleton</i>) (Quorum 9)	

*Ex officio member.

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Thursday, November 8, 1962:

Pursuant to the Order of the Day, the Senate resumed the debate on the motion of the Honourable Senator Higgins, seconded by the Honourable Senator Hnatyshyn, for second reading of the Bill S-2, intituled: "An Act to amend the Bankruptcy Act".

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Brooks, P.C., moved, seconded by the Honourable Senator Choquette, that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative.

J. F. MacNEILL,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

WEDNESDAY, December 12, 1962.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 10.30 a.m.

Present: The Honourable Senators: Hayden, *Chairman*; Aseltine, Beaubien (*Bedford*), Bouffard, Brooks, Burchill, Croll, Davies, Drouin, Gouin, Higgins, Hugessen, Irvine, Isnor, Kinley, Lambert, McCutcheon, McLean, Molson, Power, Smith (*Kamloops*), Taylor (*Norfolk*), Thorvaldson, Turgeon, Vien, Willis and Woodrow.

In attendance: Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel and the Official Reporters of the Senate.

Consideration of Bill S-2, An Act to amend the Bankruptcy Act was resumed.

Mr. T. D. MacDonald, Assistant Deputy Minister of Justice and Mr. John Larose, Superintendent of Bankruptcy, Department of Justice were heard in further explanation of the Bill.

It was resolved to report the Bill with the following amendments:—

1. *Page 1:* Strike out clause 1

2. *Page 1:* Strike out clause 2 and substitute the following:—

“1. Sections 114 and 115 of the *Bankruptcy Act* were repealed and the following substituted therefor:

‘114. The following provisions apply to the summary administration of estates under this Act, namely,

(a) all proceedings under this section shall be entitled “Summary Administration”;

(b) the security to be deposited by a trustee under section 8 shall not be required unless directed by the Official Receiver;

(c) notice of the bankruptcy shall be published in the *Canada Gazette* in the prescribed form but shall not be published in a local newspaper unless deemed expedient by the trustee or ordered by the court;

(d) all notices, statements and other documents shall be sent by ordinary mail; and

(e) there shall be no inspectors unless the creditors decide to appoint them, and if no inspectors are appointed the trustee, in the absence of directions from the creditors, may do all things that may ordinarily be done by the trustee with the permission of the inspectors.

115. The trustee shall receive such fees and disbursements as may be prescribed.’”

3. *Page 2:* Strike out lines 1 to 12 both inclusive and substitute the following:—

“174. (1) This Part applies only to the following classes of debts:

(a) a judgment for the payment of money where the amount of the judgment does not exceed one thousand dollars;

- (b) a judgment for the payment of money where the amount of the judgment is in excess of one thousand dollars if the judgment creditor consents to come under this Part;
- (c) a claim or demand for or in respect of money, debt, account, covenant or otherwise, not in excess of one thousand dollars; and
- (d) a claim or demand for or in respect of money, debt, account, covenant or otherwise, in excess of one thousand dollars if the creditor having such claim or demand consents to come under this Part."

4. *Page 2:* Strike out lines 30 to 43 both inclusive and substitute the following:—

- “(a) in the Province of Alberta
 - (i) a claim for wages that may be heard before, or a judgment therefor by, a magistrate under *The Masters and Servants Act*,
 - (ii) a claim for a lien or a judgment thereon under *The Mechanics' Lien Act*, or *The Mechanics Lien Act, 1960*, or
 - (iii) a claim for a lien under *The Garageman's Lien Act*;
- (b) in the Province of Manitoba
 - (i) a claim for wages that may be heard before, or a judgement therefor by, a magistrate under *The Wages Recovery Act*, or
 - (ii) a claim for a mechanic's lien or a judgement thereon under *The Mechanics' Liens Act*; or”

5. *Page 4:* Immediately after line 12 add the following:—

- “(4) The register referred to in this section shall be separate from all other books and records kept by the clerk and shall be available to the public for inspection, free of charge, during the hours when the office of the clerk is open to the public.”

6. *Page 4:* Strike out lines 28 to 33 both inclusive and substitute the following:—

- “(3) Where an objection has been filed by a creditor, the clerk shall forthwith, by registered mail, give notice of the objection and of the time and place appointed for the hearing thereof to the debtor and to each creditor named in the affidavit filed in connection with the application specifying the creditor whose claim has been objected to under subsection (1).”

7. *Page 6:* Strike out lines 42 to 45 both inclusive and substitute the following:—

- “(3) The clerk may issue a writ of execution or certificate of judgment in respect of a consolidation order and cause it to be filed in any place where such writ or certificate may bind or be a charge upon land or chattels.”

8. *Page 7:* Strike out lines 1 to 17 both inclusive and substitute the following:—

- “187. (1) Where at any time before the payment in full of the claims against a debtor under a consolidation order, the clerk is notified of a claim to which this Part applies that is not entered in the order, he shall, upon notice to the debtor and the creditor and to each registered creditor and subject to subsection (2),

- (a) settle the amount owing to the creditor;
- (b) where he deems it necessary to do so, vary the amounts to be paid by the debtor into court and the times of payment thereof in order to provide for the new claim; and

(c) enter the matters referred to in paragraphs (a) and (b) in the register.

(2) Where the debtor or any registered creditor disputes the claim of a creditor described in subsection (1), the clerk shall on notice of motion refer the matter to the court and the decision of the court shall be entered in the register."

9. *Page 10:* Strike out lines 13 to 16 inclusive and substitute the following:—

"pursuant to such consolidation order and have not yet been distributed to the registered creditors shall thereupon be distributed among such creditors by the clerk in the proportions to which they are entitled under the consolidation order."

10. *Page 10, line 22:* Strike out "apply" and substitute "applies".

At 1.00 p.m. the Committee adjourned to the call of the Chairman.

Attest.

James D. MacDonald,
Clerk of the Committee.

REPORT OF THE COMMITTEE

WEDNESDAY, December 12, 1962.

The Standing Committee on Banking and Commerce to whom was referred the Bill S-2, intituled: "An Act to amend the Bankruptcy Act", have in obedience to the order of reference of November 8, 1962, examined the said bill and now report the same with the following amendments:

1. *Page 1:* Strike out clause 1.

2. *Page 1:* Strike out clause 2 and substitute the following:

"1. Sections 114 and 115 of the Bankruptcy Act are repealed and the following substituted therefor:

'114. The following provisions apply to the summary administration of estates under this Act, namely,

(a) all proceedings under this section shall be entitled "Summary Administration";

(b) the security to be deposited by a trustee under section 8 shall not be required unless directed by the Official Receiver;

(c) notice of the bankruptcy shall be published in the *Canada Gazette* in the prescribed form but shall not be published in a local newspaper unless deemed expedient by the trustee or ordered by the court;

(d) all notices, statements and other documents shall be sent by ordinary mail; and

(e) there shall be no inspectors unless the creditors decide to appoint them, and if no inspectors are appointed the trustee, in the absence of directions from the creditors, may do all things that may ordinarily be done by the trustee with the permission of the inspectors.

115. The trustee shall receive such fees and disbursements as may be prescribed'."

3. *Page 2:* Strike out lines 1 to 12 both inclusive and substitute the following:

"174. (1) This Part applies only to the following classes of debts:

(a) a judgment for the payment of money where the amount of the judgment does not exceed one thousand dollars;

(b) a judgment for the payment of money where the amount of the judgment is in excess of one thousand dollars if the judgment creditor consents to come under this Part;

(c) a claim or demand for or in respect of money, debt, account, covenant or otherwise, not in excess of one thousand dollars; and;

(d) a claim or demand for or in respect of money, debt, account, covenant or otherwise, in excess of one thousand dollars if the creditor having such claim or demand consents to come under this Part."

4. *Page 2:* Strike out lines 30 to 43 both inclusive and substitute the following:

- “(a) in the Province of Alberta
 - (i) a claim for wages that may be heard before, or a judgment therefor by, a magistrate under *The Masters and Servants Act*,
 - (ii) a claim for a lien or a judgment thereon under *The Mechanics' Lien Act*, or *The Mechanics Lien Act, 1960*, or
 - (iii) a claim for a lien under *The Garagemen's Lien Act*;
- (b) in the Province of Manitoba
 - (i) a claim for wages that may be heard before, or a judgment therefor by, a magistrate under *The Wages Recovery Act*, or
 - (ii) a claim for a mechanic's lien or a judgment thereon under *The Mechanics' Liens Act*; or”

5. *Page 4:* Immediately after line 12 add the following:

“(4) The register referred to in this section shall be separate from all other books and records kept by the clerk and shall be available to the public for inspection, free of charge, during the hours when the office of the clerk is open to the public.”

6. *Page 4:* Strike out lines 28 to 33 both inclusive and substitute the following:

“(3) Where an objection has been filed by a creditor, the clerk shall forthwith, by registered mail, give notice of the objection and of the time and place appointed for the hearing thereof to the debtor and to each creditor named in the affidavit filed in connection with the application specifying the creditor whose claim has been objected to under subsection (1).”

7. *Page 6:* Strike out lines 42 to 45 both inclusive and substitute the following:

“(3) The clerk may issue a writ of execution or certificate of judgment in respect of a consolidation order and cause it to be filed in any place where such writ or certificate may bind or be a charge upon land or chattels.”

8. *Page 7:* Strike out lines 1 to 17 both inclusive and substitute the following:

“187. (1) Where at any time before the payment in full of the claims against a debtor under a consolidation order, the clerk is notified of a claim to which this Part applies that is not entered in the order, he shall, upon notice to the debtor and the creditor and to each registered creditor and subject to subsection (2),

- (a) settle the amount owing to the creditor;
- (b) where he deems it necessary to do so, vary the amounts to be paid by the debtor into court and the times of payment thereof in order to provide for the new claim; and
- (c) enter the matters referred to in paragraphs (a) and (b) in the register.

(2) Where the debtor or any registered creditor disputes the claim of a creditor described in subsection (1), the clerk shall on notice of motion refer the matter to the court and the decision of the court shall be entered in the register.”

9. *Page 10:* Strike out lines 13 to 16 inclusive and substitute the following: "pursuant to such consolidation order and have not yet been distributed to the registered creditors shall thereupon be distributed among such creditors by the clerk in the proportions to which they are entitled under the consolidation order."

10. *Page 10, line 22:* Strike out "apply" and substitute "applies".

All which is respectfully submitted.

Salter A. Hayden,
Chairman.

THE SENATE
STANDING COMMITTEE ON BANKING AND COMMERCE
EVIDENCE

OTTAWA, Wednesday, December 12, 1962.

The Standing Committee on Banking and Commerce, to which was referred Bill S-2 to amend the Bankruptcy Act, resumed this day at 10.30 a.m.

Senator Salter A. Hayden (*Chairman*), in the Chair.

Gentlemen, it is now 10.30, and we have Bill S-2 for further consideration. We have heard all the evidence to be offered, and we are now ready to consider the bill section by section, to decide what we are going to do with it, if anything.

If I might just summarize for a moment, there has been evidence both pro and con in connection with the present sections 114, 115 and 116 in the Bankruptcy Act which provide for a summary administration of estates where there is not more than \$500 in the estate after you take care of all the secured claims. Then the other part of this bill adds a Part X which is really called a consolidation order, under which the debts of a person are made the subject of a consolidation order, and provision is made for the orderly payment of these debts. There is a limitation there. These debts cannot be the subject matter of a consolidation order if they are in excess of \$1,000, but if a person gets a judgment in excess of \$1,000 he may be made part of the consolidation order, with his consent.

Then there are certain exclusions to be found in the bill. You know that Part X is being proposed because a provincial statute in Alberta was declared unconstitutional by the Supreme Court of Canada. It had never operated in Alberta, but an act similar to Part X has operated for years in Manitoba. You will notice it is provided in this bill that Part X will come into force in any particular province only where you have a request from the Lieutenant Governor in Council of the province. Therefore, you have to have this concept of a Part X: that is, in some provinces it may be in force, in that the Lieutenant Governor of that province may have made the necessary request; in other provinces it may not be in force, and the question then is, unless you leave in sections 114, 115 and 116 in some form, you would have no summary administration provisions in those provinces which did not adopt Part X.

In proceeding with the consideration of this bill I think we should deal first with clause 2, which proposes the repeal of the summary administration provisions.

Senator ISNOR: Mr. Chairman, before you proceed with the consideration of any particular section, I inquired of the acting chairman at the last meeting as to whether further representations were made by any individual or association. I had particularly in mind at that time the Credit Grantors Association, and I was informed that no further representations had been made. I understand that since then a brief covering certain amendments has been placed before the chairman.

The CHAIRMAN: Yes, I have before me suggested amendments from that association referable to Part X, but what I am discussing at the moment are sections 114, 115 and 116.

Senator VIEN: Mr. Chairman, did not the Board of Trade of Toronto, the Board of Trade of Montreal and the Credit Grantors Association all agree to clauses 1 and 2? I thought they were in agreement.

The CHAIRMAN: No, the Board of Trade of Toronto said:

(1) If you are not going to repeal 114, 115 and 116, then we suggest you make certain changes and one is that there should be provision for inspectors at the discretion of the creditors,....

and the Board of Trade of Montreal supported the repeal of 114, 115 and 116.

Senator ASELTINE: Also the Canadian Bar Association?

The CHAIRMAN: The Canadian Bar Association recommendation was two-fold, one was that the section should be repealed, and then they said alternatively:

If you do not repeal them, then we suggest that the following several paragraphs be added.

Their representation was to that extent in the alternative.

Senator VIEN: I think their preference was for repeal. I have discussed the matter with the Montreal Chamber of Commerce as well as the Board of Trade and they seemed to prefer to leave clauses 1 and 2 as they were although they left it to the discretion of the committee.

The CHAIRMAN: I said the Board of Trade of Montreal supported the repeal of sections 114, 115 and 116, but I said the Board of Trade of Toronto had the alternative basis, that is that there should be certain amendments.

Senator ASELTINE: But, they had a preference.

The CHAIRMAN: I don't think so.

Senator VIEN: Is this the Board of Trade of Montreal?

The CHAIRMAN: Let us not get mixed up. The Board of Trade of Montreal supported repeal.

Senator VIEN: I would like to have the amendments, if it is proposed to amend.

The CHAIRMAN: That brings me to this point in connection with the amendments. Mr. MacDonald, the Deputy Minister of Justice—

Senator CROLL: May I interrupt for one second. Following on what Senator Brooks said and looking at a brief I see this comment:

We are of the view that the Summary Administration provisions should remain in the Act whether or not the Orderly Payment of Debts provisions are enacted.

The CHAIRMAN: I was saying Mr. MacDonald has been kind enough, without assuming any responsibility, and without in any way being said to be the sponsor of such amendments, to do a little drafting in connection with these sections 114, 115 and 116, having regard to objections that were made to the sections in the present form. I have this draft, and may I just read it to you. The proposal is, as I have it before me, to strike out 114, and 115, and to substitute the following which would be a new 114.

114. The following provisions apply to the summary administration of estates under this Act, namely,

- (a) all proceedings under this section shall be entitled "Summary Administration";
- (b) the security to be deposited by a trustee under section 8 shall not be required unless directed by the Official Receiver;

- (c) notice of the bankruptcy shall be published in the Canada Gazette in the prescribed form but shall not be published in a local newspaper unless deemed expedient by the trustee or ordered by the court;
- (d) all notices, statements and other documents shall be sent by ordinary mail; and
- (e) there shall be no inspectors, unless the creditors decide to appoint them, and if no inspectors are appointed the trustee, in the absence of directions from the creditors, may do all things that may ordinarily be done by the trustee with the permission of the inspectors.

Senator DROUIN: How does this amendment strike our chairman?

The CHAIRMAN: It deals with the points which are raised. I thought there should be provision by which they could have inspectors.

Senator CROLL: He has followed the Toronto suggestion. He struck out (c), (f), (g) and (h). That is what he has done. How has he covered them? I don't quite get it yet. Wait until I see if I can't compare it.

The CHAIRMAN: We will get this for you in a moment, Senator Croll. Did you want to ask Mr. MacDonald how the amendments which are read would affect what is presently in sections 114?

Senator CROLL: Yes, Mr. MacDonald, I noticed that you have struck out of the present act subsections (c), (f), (g) and (h). They seemed to have had a purpose in the last Act. For instance, subsection (c) says:

the trustee shall apply to the Court to fix a date for the hearing of the application for the discharge of the bankrupt and shall include notice thereof in the notice of the first meeting.

How under this section can you obtain a discharge?

The CHAIRMAN: In the ordinary way.

Senator CROLL: What is the ordinary way?

Mr. T. D. MacDonald, Assistant Deputy Minister, Department of Justice: Before we come to that, Senator Croll, may I mention the circumstances under which this sheet was prepared. This is not a proposal on our part.

Senator DROUIN: We understand that.

Mr. MACDONALD: This was brought in purely as a drafting exercise at the suggestion of Senator Leonard. Our terms of reference were to the effect that we should take certain objections that had been put forward before the Senate Committee to the present bill, those objections which had appeared to find favour among a considerable number of the members of the committee, and put them down in this form so that they could be appraised. That, as we understood it, were the terms of reference, and that is what we did.

In pursuance of that, there were four paragraphs in section 114 upon which there seemed to be fairly common ground. Those were (c), (f), (g) and (h), the common ground being that the Canadian Bar Association and the chief justice of the Bankruptcy Court of one of the provinces recommended, first, to strike out the summary administration provisions entirely, and in the alternative, if not satisfied to do that, to strike out (c), (f), (g) and (h). The representations of the Metropolitan Toronto Board of Trade differed in that they said "don't strike out the summary administration provisions entirely, but leave them except for (c), (f), (g) and (h)." As regards (c), (f) and (h) they were on common ground with the alternative recommendation of the Canadian Bar Association and the chief justice to strike them out, but as to (g) they said "instead of striking it out and doing away with the provision that there shall be no inspectors, make it that inspectors shall be optional."

So, on this sheet we have left out (c), (f) and (h), and when you come to (g), which you will find in (e) on this sheet—paragraph (g) of section 114—(g), you will see that we have patterned the proposed section 114(e) on the representations of the Toronto Board of Trade because it now reads:

(e) There shall be no inspectors unless the creditors decide to appoint them, and if no inspectors are appointed the trustee, in the absence of directions from the creditors, may do all things that may ordinarily be done by the trustee with the permission of the inspectors.

The original provision simply said that there shall be no inspectors and then went on in the same way to the effect that the trustee, in the absence of direction from the creditors, might do all things that might ordinarily be done by the trustee with the permission of the inspectors.

As to the remainder of the section we did this: The first paragraph of section 114 as it now is reads as follows:

(a) all proceedings under this section shall be entitled "Summary Administration".

That is titular, and we left it here as (a). When we came to (b) we put it in a modified form and it now reads:

(b) the security to be deposited by a trustee under section 8 shall not be required unless directed by the Official Receiver.

In (b) on the sheet before you the security to be deposited by the trustee under section 8 shall not be required unless directed by the Official Receiver. That would have the effect of economizing to the small extent of eliminating that expense unless the official receiver in a particular case says, "I think in this case there should be a bond in the ordinary way".

Senator CROLL: Economizing, Mr. MacDonald? Who is economizing? You are merely making a provision there for the filing of a bond which costs money. Certainly the word "economizing" does not fit into that.

The CHAIRMAN: The point is that if you are not required to file a bond you do not spend money from the estate.

Senator CROLL: But at the moment you are not required to file a bond, and now Mr. MacDonald says you are not required to file it unless directed by the Official Receiver. One cannot talk about economizing. That will cost \$10, \$20 or \$50, or something. However, it is another proceeding we have to get into, and a bankrupt does not easily get a bond.

Mr. MACDONALD: The reason I referred to economizing, Senator Croll, is that the suggestion of the Toronto Board of Trade was that paragraph (b) should be allowed to stand.

Senator CROLL: Paragraph (d)?

Mr. MACDONALD: No, that paragraph (b) of the present section 114 should be allowed to stand, and it says this:

(b) the security to be deposited by a trustee under section 8 shall not be required.

Senator DROUIN: That is the present provision?

Mr. MACDONALD: Yes, that is the present provision. In this re-draft we let that stand with the qualification that the bond can be required by the Official Receiver. This preserves the principle of economy now present in the section whereby a bond is completely eliminated, but also adds the safeguard that in a particular case the official receiver may still require that there be a bond.

Senator CROLL: But, Mr. MacDonald, when you start talking about the Official Receiver under summary administration you have taken the guts out of the intention of the summary administration proceedings which provide for a

poor man's bankruptcy. You have now got him into proceedings under the Bankruptcy Act by using a sort of half-way measure. You have taken him out of the summary administration proceedings which provide for an easy and cheap way of doing it.

The CHAIRMAN: But every bankruptcy has to get into the hands of an Official Receiver—

Senator CROLL: Yes, but the summary administration—

The CHAIRMAN: —and it is a bankruptcy.

Senator CROLL: Well, it is a poor man's bankruptcy.

Senator McCUTCHEON: Every bankrupt is poor.

Senator CROLL: Well, perhaps you are right, but this particular man is really poor because we have made special provisions for him, but now we are bringing him into the full operation of the Bankruptcy Act which was never the intention of the summary administration proceedings.

The CHAIRMAN: That is the procedure now under the present law.

Senator CROLL: There is nothing that speaks of an Official Receiver in sections 114, 115 and 116.

The CHAIRMAN: No, section 116 says:

Except as provided in section 114, all the provisions of the Act, in so far as they are applicable, apply *mutatis mutandis* to summary administration.

Senator CROLL: Quite so, but these sections stood by themselves, and we so interpreted them, and as a matter of fact they have been adopted for all purposes in these provinces and other places. We are now starting to head them back into the act again.

The CHAIRMAN: They are in there anyway.

Senator BROOKS: They found so many abuses that they are now trying to correct them.

Senator CROLL: But in the evidence before us with respect to summary administration I do not recall anything that spoke of abuses.

Senator BROOKS: Oh, yes, there was. The Toronto Board of Trade mentioned it.

Senator CROLL: I was here for every meeting except the one before which the Montreal Board of Trade appeared, and I read their brief. They were out of line with the rest. They may be right, and if there are abuses in the province of Quebec then that is one thing, but they are not abuses in the rest of the provinces and the province of Quebec can fall back upon the Lacombe Law, in any event. They are not abuses in the other places, and we are now depriving them of that right.

The CHAIRMAN: The only point of adding the Official Receiver in this section is that if he requires it the trustee must put up a bond. It is, I suppose, a kind of a check rein on the trustee. If the Official Receiver thinks that the trustee is not likely to behave in the proper manner then he can order a bond. It is a check rein, and that is all. So far as bringing the Official Receiver into it is concerned, well, he is in it now.

Senator DROUIN: He is in it under section 4. He is the official of the court, whether he is mentioned here or not.

The CHAIRMAN: That is right.

Mr. MACDONALD: I was going to say, Senator Croll, that the result you point at was in the original bill. I point out that that result is not brought about by this sheet that you have before you. It is the result of the original bill.

Senator CROLL: What is that?

Mr. MACDONALD: The result that you point to of requiring a bond with its incidental expense would be a result of the original bill. This sheet that you have before you is not changing the bill so as to bring about that result.

Senator CROLL: We have it in the bill?

Mr. MACDONALD: Under the bill section 114 would be completely repealed.

Senator CROLL: Oh, yes.

Mr. MACDONALD: As to going before the Official Receiver, and the additional expense of his bringing his mind to bear on the question of whether there should be a bond, the bankrupt will be before the Official Receiver anyway, in the beginning. It is not going to require a special application to him for that purpose. The bankruptcy is going to be before him, and when it is before him in the ordinary way he can direct his attention to the question of whether or not this particular estate has particular circumstances that make it desirable that there be a bond. For example, he might say: "Well, this case is being brought under the summary administration proceedings because the apparent assets of the bankrupt available for distribution do not amount to more than \$500, but I do not believe that is the case. I believe that if the trustee really looks around here he will find that the assets are much more than \$500, and I also believe that he should pursue the salary of this bankrupt to see if he is in a position to make contributions from his salary to the fund for the satisfaction of the creditors. In those circumstances I think, therefore, that there should be a bond".

The CHAIRMAN: The next one is (c).

Mr. MACDONALD: Paragraph (c) in the present act is the paragraph which provides that the trustee shall apply to the court to fix a date for the hearing of the application for the discharge of the bankrupt and shall include notice thereof in the notice of the first meeting. That is left out, because it appeared to be common ground in the main submissions, that it should be left out.

As to paragraph (d), in the original section it now reads that notice of the bankruptcy shall be published in the *Canada Gazette* in the prescribed form but shall not be published in a local newspaper unless deemed expedient by the trustee or ordered by the court. That now appears as paragraph (c).

Mr. MACDONALD: Without any change.

Senator DROUIN: Nobody reads the *Canada Gazette*, especially down in a place like the Gaspé. A notice in the *Canada Gazette* would be absolutely worthless. What is the reason for doing away with the notices in the local newspapers?

The CHAIRMAN: There were never notices in the local newspapers.

Senator DROUIN: What would be a good reason for not putting it in the local newspaper instead of in the *Canada Gazette* which no one reads, not even ourselves?

Mr. MACDONALD: Under section 114 as it now stands, the provision is that it will be published in the *Canada Gazette*, presumably for record purposes, and that the ordinary requirement of its being published in the local newspaper be dispensed with.

Senator DROUIN: What do you mean by that? Do you mean that the requirement of publishing in the *Canada Gazette* is just a question of statistics, so that the federal Government may know how many bankruptcies there have been or where they took place; or is it to give notice to the creditors that someone is going bankrupt?

Mr. MACDONALD: I think it is more than the former. I think it can be said that it creates a continuing record of bankruptcies which may be consulted from time to time by people who are interested in such matters.

Senator DROUIN: Who are these people, in the main?

Mr. MACDONALD: I suspect, without having gone into this point particularly, that a considerable number of organizations interested in credit matters generally, in different parts of the country, make it a practice to follow up the Canada Gazette for notifications and for records in relation to bankruptcy, and for information of that nature.

Senator DROUIN: Many of the creditors we are referring to here are small people—the corner grocer, butcher and candlestick maker, if you wish; and a notice in the Canada Gazette that one of their clients has gone bankrupt is absolutely worthless to those people.

The CHAIRMAN: The provision does not preclude publication in the local newspaper. All it says is that you do not have to advertise in the local newspaper unless the trustee deems it expedient, or if it is ordered by the court. There is no prohibition on advertising in the local newspaper.

Senator BROOKS: Notices are sent out by mail also.

The CHAIRMAN: Notices are sent to all creditors.

Mr. MACDONALD: Honourable senators will understand, of course, that paragraph (c) maintains the present summary administration provision which is exactly as it appears now in paragraph (d) of the present section 114, that is, this is not making it more onerous on the estate as far as publication is concerned.

Senator VIEN: Are all cases under the summary administration provisions of the act reported to the Official Receiver; and, if so, how soon?

Mr. MACDONALD: Yes, they all come before the Official Receiver at the beginning.

Senator VIEN: Immediately?

The CHAIRMAN: Immediately.

Mr. MACDONALD: Immediately, as the method of going into bankruptcy; and they are reported in due course to the Superintendent.

Senator ISNOR: If you change one word in paragraph (c), to change "shall not be published" to "need not be published" in the local newspaper, would that meet the objection?

The CHAIRMAN: That would not change it.

Senator CROLL: I come back again to the purpose of the Summary Conviction Act, which has been the law since 1949, if I am correct. It was not to ballyhoo, to advertise, to make it generally known. On the contrary, it was to let this man, if he is an honest man—we know some dishonest people got in—to come in and get it cleaned up and start all over again in a small way. Really, no one gets hurt too badly in the circumstances. Now we are starting to advertise him in the weekly newspaper or the local newspaper.

The CHAIRMAN: No, we are not doing anything more there than is in the present act.

Senator CROLL: No, no, no, I am just speaking about the suggestion. He is carrying it forward; but the concept behind the act originally was to let the clerk do it and get rid of it as best he could.

Senator THORVALDSON: Of course, the whole case of the Montreal Board of Trade the other day was that, even if that is the concept of the act, in one year \$14 million in debts were involved and there were only three million dollars in proceeds and, if I remember exactly what Mr. Greenblatt said, hardly any of it was the creditors. Presumably, it all goes to trustees. That is a lot of money.

Senator CROLL: There you are wrong, senator. I realize they say it goes to the trustee, but that is not true at all. A great deal has been said about the trustee. If you examine these bankruptcies in Montreal, and those large sums you play around with, you will find that most of them are frauds, and they do nothing at all about them. They just wash their hands of it and no one ever attempts to prosecute them or get after them. They blame it on the trustee. Money just does not flow into the trustee. These people have designed these things—not all of them, but in the main—and everyone lacks the teeth to do something about them. I picked up an article in a paper yesterday. It dealt with a public business, the Neutro-Bio of Canada Limited. It was doing a big business all over the country. I think it emanated from Vancouver.

Senator HUGESSEN: It had assets of more than \$500.

Senator CROLL: This ran into thousands and thousands of dollars. There was a great big organization and suddenly one morning it went bankrupt. Now I see it was bought for \$250,000 by a man named Kruger. I do not know who he is, but that does not make any difference. The point is that what was involved here was an appeal to the public for money. There were millions of dollars involved and suddenly the company goes bankrupt; and the next day we find out that the people who were originally in it have now wound up that company for \$250,000. Nothing is done about it, yet here we are worrying about the fellow who owes \$500 to ten or twelve people, and we feel we are really in trouble. We are trying to make it tough for him, I think the Board of Trade is—

Senator BROOKS: The Board of Trade is as responsible an organization as one can get in Montreal and I do not think they would come here and misrepresent a bill of this kind.

Senator CROLL: I do not think they are misrepresenting, but they are not telling the whole story.

Senator BROOKS: Your story is an entirely different one from the story they were telling.

The CHAIRMAN: What we are attempting to do here is to review some drafting which Mr. MacDonald has been kind enough to do, on the basis that it might incorporate the objections. He does not sponsor it in the sense that he is putting it before us, but this is to be helpful. The objections which Senator Croll is making at the moment would relate more to the bill and the repeal of sections 114 and 115 and 116.

Senator CROLL: No, no; I am opposed to the repeal of sections 114, 115 and 116.

The CHAIRMAN: That is exactly what I said.

Senator CROLL: I am sorry. I think these are excellent sections. There may be some re-drafting needed. I am not worried about that.

The CHAIRMAN: The next is paragraph (e) in the present act. You have shortened that, Mr. MacDonald, and it appears as paragraph (d) in this?

Mr. MACDONALD: That is correct, Mr. Chairman. It has the effect of permitting notices, statements and other documents still to be sent by ordinary mail, but reinserts the ordinary requirement that they be sent to all creditors even if their claims be under \$25.

The CHAIRMAN: The next one is paragraph (f), which you strike out.

Mr. MACDONALD: That is correct.

The CHAIRMAN: And paragraph (g)?

Mr. MACDONALD: It is dealt with in the manner described; that is, by making inspectors optional.

Senator DROUIN: That is (e) in the amendments?

The CHAIRMAN: Yes. Now paragraph (h) you strike out.

Mr. MACDONALD: We strike it out because that was one of the paragraphs of common ground.

Senator CROLL: Common ground of objection?

The CHAIRMAN: Yes.

Senator CROLL: By various creditors. But we are now getting to the point where we are not getting the benefit of Mr. MacDonald's views at all. He says, "I am just a draftsman". That is fine. But is that a good reason for striking out because it was common ground by the people who objected to it?

The CHAIRMAN: No, that is common ground—

Senator CROLL: That is for the submission?

The CHAIRMAN: Yes.

Mr. MACDONALD: Now we come to paragraph (i) and that has been left out on the basis that it is already sufficiently covered in the ordinary provisions of the act which you apply *mutatis mutandis* to summary administration estates by virtue of section 116; it adds nothing, and did not add anything, in fact, to the section.

The CHAIRMAN: Now paragraph (j).

Mr. MACDONALD: Paragraph (j) has been omitted entirely upon the same reason. It is covered by section 111 of the act, by force of section 116.

The CHAIRMAN: Paragraph (j) is redundant, is it not?

Mr. LAROSE: Yes.

The CHAIRMAN: Then paragraph (k), you have struck that out.

Mr. MACDONALD: Paragraph (k) is struck out, too, for the reason that the discharge of the trustee should depend upon the ordinary considerations applicable to other estates and that the creditors should receive notice and have an opportunity to speak to the subject of the trustee's discharge if they felt they had reason for doing so.

Senator CROLL: This is not the trustee's discharge, is it, it is the bankruptcy discharge?

Mr. MACDONALD: No, the trustee, Senator Croll; paragraph (k) refers to the trustee.

Senator CROLL: What it does, and I do not suggest your own views are expressed in the drafting, is to take out the three things: the bankrupt's submission for proposal at the first meeting; the examination to be held at the first meeting; and the trustee's application for date of hearing of the discharge. Those three things do not appear in the drafting in any form?

Mr. MACDONALD: That is correct.

The CHAIRMAN: That fell under the general law.

Senator CROLL: Let me ask you this, Mr. MacDonald; If those three sections of this draft which you did at the request of the committee and you told us about are accepted and these are left out, what is your view about the adequacy or inadequacy of the summary administration and the purpose for which it was put on the statute books?

Mr. MACDONALD: Well, that goes back to the original bill.

Senator DROUIN: I do not know if that is very pertinent. It has been standing for a number of years, and are we going back to find out why?

The CHAIRMAN: I do not think Mr. MacDonald meant that.

Senator DROUIN: No, I am referring to Senator Croll's question involving certain provisions enacted a long time ago. I think that was his question.

Senator CROLL: No, I think Mr. MacDonald understood my question.

Mr. MACDONALD: In answer to your question, Senator Croll: as I started to say, that goes back to the explanation of the original bill. The explanation of the bill was that in view of the abuses which had turned up under the summary administration provisions it was being proposed that they be repealed outright. Now, as to repealing part of the summary administration provisions, for example, (c), (f), (g) and (h), and letting the others stand, the view we expressed was that the paragraphs which remained were not really worth salvaging. I think that was also the view expressed by the Montreal Board of Trade in its submission on the last day.

Senator HUGESSEN: Yes. The Montreal Board of Trade said in effect that if the amendments proposed in these sections by the Toronto Board of Trade were enacted it would make so little difference that you might as well repeal the whole thing and it would not be substantially different.

Senator VIEN: Are there provisions in other provinces similar to what we have in Quebec under the name of the Lacombe Law? I do not speak of Manitoba and Alberta, but outside Manitoba and Alberta?

Mr. MACDONALD: The only other provisions that I know about, senator, are the part relating to consolidation orders of the Division Courts Act of Ontario and a recent act of the province of Newfoundland, which touches a little bit but not very much on the subject.

Senator VIEN: What the Montreal Board of Trade suggested, and I am reading from their submission, was this:

To deter an individual debtor from choosing bankruptcy as the only solution to his problem when, with planning and good intentions he could discharge his debts over a period of time, and this without undue hardship.

Therefore, if these three sections were withdrawn, as Senator Hugessen has just pointed out, or if these amendments are adopted, even if they remained, there would be very little difference between the repeal and the sections as amended, and therefore if we desire to reduce the cost of liquidating an estate of the small bankrupt or insolvent, they have the recourse to the other provisions of the provincial institutions. They could do it there with the least possible expense under the supervision of the registrar of the magistrates court without much expense to either creditors or debtor. The debtor gives notice of all his creditors under oath to the registrar of the court. Then notice is given to all creditors to file their claims. They file their claims without any expense. Then the clerk of the court receives the seizable portion, the attachable portion of the salary or other revenue, and within three months makes a free distribution to the creditors; and it is under the supervision of the court. Is a similar provision made in all other provinces? I understand the provinces of Quebec and Ontario have very satisfactory institutions of this kind.

The CHAIRMAN: Very limited in Ontario in respect to division court claims, where you have limited dollar amounts.

Senator VIEN: The Montreal Board of Trade and La Chambre de Commerce de Montréal are in favour of using the Lacombe Law, a law which has given tremendous satisfaction in the case of small insolvent debtors, through which distribution of available assets is being done among the creditors who list their claim with the clerk of the court, all at the smallest possible expense.

The CHAIRMAN: I think the Lacombe Law deals only with the exigible portion of the debtor's wages or salary.

Senator VIEN: Yes, that is true. But if there are other assets of any sizable volume then the Bankruptcy Act can be made use of. The Lacombe Law is to save the debtor the obligation of going into bankruptcy under the Bankruptcy Act where the liquidation of his assets will be much more expensive.

The CHAIRMAN: But he still can come under the present bankruptcy law with its provisions for summary administration. You have all these provisions in Quebec too.

Senator VIEN: Indeed, except as Senator Hugessen pointed out, quoting the submission of the Montreal Board of Trade, if you amend clause 2 of the bill so as not to repeal sections 114, 115 and 116 of the Act there will be very little difference between the repeal and the amended sections.

The CHAIRMAN: Yes, there will be this substantial difference, that you can have a bankruptcy for the small man where his assets are not in excess of \$500 after secured claims are taken care of and that can be carried out even without a bond in the proper circumstances, and you can have a limitation on the trustee's fees. Therefore it can be dealt with very expeditiously.

Senator VIEN: In Quebec, of course, we are very wicked and the Montreal Board of Trade claims many dishonest debtors deliberately secrete or fail to disclose assets in order to qualify under summary administration where there is far less risk that their conduct will be looked into and dealt with as it deserves. Therefore the main objection to the summary provisions of the act is the abuses that are being made, and we are all in favour of the bill as it stands, that is repealing the two sections.

The CHAIRMAN: Yes, but the alternative is: if you take out sections 114, 115 and 116 completely then any person who meets the requirements of becoming a bankrupt is thrown under the main provisions of the act.

Senator HUGESSEN: True, Mr. Chairman, but the Montreal Board of Trade told us what the difference was in actual cost as between coming under the present summary provisions and coming under the ordinary provisions of the act. You were not present the other day when they told us this difference was somewhere in the order of between \$35 and \$40, which seems to me to be very minor.

Now, if I may say just a word, we have three alternative courses to be taken here:

We are asked in sections 1 and 2 to repeal the summary provisions. We can refuse to do that and leave the present summary provisions as they are. None of the evidence that was adduced before us was in favour of taking that course. The only person who has anything to say about it is Senator Croll.

The second course we were asked to follow was suggested to us by the Toronto Board of Trade, to amend section 114 in the sense of the amendment being put forward by Mr. MacDonald.

The third course is the one which the majority of the witnesses suggested to us—the Montreal Board of Trade, the Credit Grantors Association, and I understand also the Bar Association—and that is to do what the bill does and to repeal the summary sections completely on the ground that there have been a number of abuses that have crept in in a very large number of cases.

The thing that impresses me in the evidence adduced last week was what Mr. McQuillan, who is a great expert on bankruptcy, a member in the Bar of Montreal, said to us, as found at page 108 of the report of our proceedings. His statement reads:

In 1949, Summary Administration appeared for the very first time in our act. There is no question as to the source of the section. That section in our act is actually section 129 of the English Bankruptcy Act. The error, if I may be permitted to say so, that the legislature may have made in 1949 is that, in taking the principle of quick administration of a small estate from the English Bankruptcy Act, they did not go all the way.

Under the English Bankruptcy Act, the official receiver, who is the paid employee under the Bankruptcy Act, is the trustee of all small

estates. Our act did not want to infringe upon the ordinary system of licensed trustees, which has been in effect since 1932, so they dropped that, they stopped at naming the official receiver as automatically the trustee in all small estates and left the ordinary licensed trustee to take over those small estates.

Now, that is just where the trouble has come and that is why the Montreal Board of Trade suggests that we do as this act suggests, we do not repeal the summary administration provisions.

If I may be allowed to express my personal opinion I thought they made their case.

The CHAIRMAN: If we repeal sections 114, 115 and 116 the effect will be that all bankruptcies will proceed down the same road and be subject to the mishaps on that road. This has occurred, if I may suggest, in connection with estates over \$500 as it has with those where there has been only \$500, so far as the action of a debtor is concerned, concealment of assets.

Senator VIEN: Prior to the introduction of the Bankruptcy Act in Ontario was there a provision for an insolvent to assign all of his estate for the common benefit of his creditors?

The CHAIRMAN: Yes.

Senator VIEN: Are these provisions still in effect?

The CHAIRMAN: Your use of the word "insolvent" threw me off a little—no.

Senator CROLL: The 1949 act was not the first Bankruptcy Act.

The CHAIRMAN: No, we had one before that.

Senator VIEN: In Quebec an insolvent can always assign all his estate in favour of his creditors.

The CHAIRMAN: I would say a debtor can arrange a deal with his creditors.

Senator VIEN: A man is insolvent as soon as he ceases paying his creditors, under the definition of the Civil Code of Quebec. Therefore as soon as he ceases to pay his creditors he is called an insolvent, and under provisions of the Civil Code he could assign all his assets for the benefit of his creditors, under the provision of the civil law. I was just wondering if he could do likewise in Ontario or in the English-speaking provinces.

Senator CROLL: I think there is a play on words here. For instance, there is a difference between being solvent and being bankrupt. A lot of us around the table may be solvent but we are not bankrupt. We have always made that distinction in Ontario.

Senator VIEN: At present a man who is unable to pay his creditors, instead of applying under the Bankruptcy Act could apply under the civil law, and under the civil law he can assign all his assets for the common benefit of his creditors.

The CHAIRMAN: Yes, but the Bankruptcy Act would over-ride the civil law if anyone took proceedings under the Bankruptcy Act. That would be the end of it.

Senator VIEN: Yes.

Senator BOUFFARD: As a matter of fact I don't think these provisions of the Civil Code of procedure apply any more since the Bankruptcy Act came into force.

Senator VIEN: They would not apply if there was an application in bankruptcy. As the Chairman said it would over-ride the provisions of the Civil Code.

The CHAIRMAN: We have spent some time now discussing section 114 and the changes to meet objections, as against the repeal, and I would suggest that it may be time we decided whether we agree that the section should be repealed or whether we agree that it should be modified.

Senator BOUFFARD: Mr. Chairman, would not there be a possibility for the committee to amend the act in such a way that an Official Receiver would be the trustee for all these small bankruptcies, as they have done in England? It would limit the cost considerably.

The CHAIRMAN: I might ask Mr. MacDonald if he has any opinion on that.

Mr. MACDONALD: Thank you, Mr. Chairman. I think the person to express an opinion on that is the Superintendent of Bankruptcy.

The CHAIRMAN: Mr. Larose?

Mr. J. S. Larose, Superintendent of Bankruptcy: Mr. Chairman, a similar suggestion was advanced at the time the bill which forms the basis of our present act was being studied in committee, and representations were made on that occasion, and in the light of those representations I think it was the Senate committee, if I am not mistaken, which declined to agree with the administration of small estates being in the hands of the Official Receiver.

Senator McCUTCHEON: Who made those representations?

Mr. LAROSE: The Official Receivers themselves did. Perhaps I should put it this way, that one or two of them had experience in bankruptcy administration and knew whereof they spoke with regard to the duties and functions of Official Receivers.

Senator McCUTCHEON: I move we adopt this in accordance with the drafting.

Senator HUGESSEN: Sections 1 and 2?

Senator McCUTCHEON: Sections 114, 115 and 116.

The CHAIRMAN: In connection with section 115, we have not talked about it, but Mr. MacDonald and I have. Section 115 deals with the fees and disbursements of the trustee. We thought that perhaps section 115 should stop in the middle of the second line. As it stands now it reads in this fashion:

The trustee shall receive such fees and disbursements as may be prescribed and, if the fees and disbursements are not paid, he may, after giving the bankrupt seven days' notice of his intention, apply to the court to cancel the assignment.

We thought, why should the trustee of a small estate be able to duck the issue any more than the trustee of a large estate, once he takes on the job?

Senator McCUTCHEON: You would stop after the word "prescribed"?

The CHAIRMAN: Yes.

Senator CROLL: That makes sense.

Hon. SENATORS: Agreed.

Senator HUGESSEN: If we are carrying those sections we are carrying section 115, are we not?

The CHAIRMAN: Senator McCutcheon's motion was—

Senator McCUTCHEON: To leave sections 114 and 116 as they are, but I am perfectly willing to adopt the chairman's suggestion concerning section 115.

The CHAIRMAN: So sections 1 and 2 of the bill would be struck out.

Senator HUGESSEN: I thought you were moving to pass sections 1 and 2 of the bill?

The CHAIRMAN: Let me clarify the motion as we have it. Section 1 provides for the repeal of section 26(6) of the Bankruptcy Act. That is the section which sets out the fees under which a person may come under the summary administration provisions, so there is no use leaving sections 114, 115 and 116 in unless you also leave section 26(6) in. That is the authority.

The motion we have in connection with section 2 of the bill is that section 2 be struck out and that the following be substituted therefor—and then for section 114 of the act to be replaced and the changes proposed in the memorandum submitted by Mr. MacDonald be adopted; for section 115 of the act to be amended by striking out all the words after the word "prescribed" on the second line, and for section 116 of the act to remain as it is. That is the substance of Senator McCutcheon's motion. Do you understand the substance of his motion? Are you ready for the question?

Those in favour of Senator McCutcheon's motion, please raise your hand.

The CLERK OF THE COMMITTEE: Yeas 18.

The CHAIRMAN: Carried.

Now we come to section 3 of the bill.

Senator VIEN: Mr. Chairman, would you repeat what this change in section 115 is? After "prescribed"—period?

The CHAIRMAN: Yes, after "prescribed"—period.

Now we come to section 3, which provides a new Part X. Some amendments have been proposed, but first of all we have some drafting which Mr. MacDonald has done, I assume, in conjunction with Mr. Larose. Is this subject to the same qualification, that this is not a recommendation of yours, but is adopting what seems to be the concensus of representations made to us as to changes?

Mr. MACDONALD: No, Mr. Chairman, that is not quite the position, because our terms of reference were somewhat different as between Part X and the summary administration provisions. If I may recall to you—and I think I am putting it fairly—the terms of reference were put forward by Senator Hugessen and Senator Leonard, and they were—as we understood them, at least, and as we acted upon them—to reflect on this page such administration changes as would not tend to increase the cost of the administration under Part X.

Senator HUGESSEN: I think that is right.

The CHAIRMAN: Yes, I recall that.

Mr. MACDONALD: As a result, the amendments on this sheet relating to Part X fall far short of the submissions that were made to you by the Credit Grantors Association and other bodies.

The CHAIRMAN: Can we go through Part X then, section by section? Let us take section 173 of Part X, as contained in section 3 of the bill. This is the office procedure of making use of the clerk of the court in the particular territory. Is there any objection to section 173, or shall that section carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Then we come to section 174. We have a suggestion by the Credit Grantors Association in connection with section 174(1). I should tell you what it is. They suggest a claim or demand should include the qualification for taking the benefit of Part X which is related to \$1,000 in the bill. They suggest it should extend to cover claims in excess of \$1,000, if the creditor having such claim or demand consents to come under this Part. Under the bill a creditor who has a claim in excess of \$1,000 and who wants to get under the provisions of the consolidation order would first have to get a judgment, and then could bring in his judgment if it is in excess of \$1,000. Do you have any comment, Mr. MacDonald?

Mr. MACDONALD: Mr. Chairman, the only comment I have on that is that these provisions are taken from the Manitoba and Alberta acts. As far as they are concerned, therefore, relating to the provinces of Alberta and Manitoba they are what the provinces themselves have by implication suggested should be applicable in those provinces.

Senator VIEN: Is there any objection to having them apply throughout?

Mr. MACDONALD: Senator Vien, as far as the other provinces are concerned the question might not fall to be determined by this bill, because the classes and amounts of debts might be designated by the regulations.

The CHAIRMAN: Under this act?

Mr. MACDONALD: Yes.

Senator VIEN: Would there be any objection to adding paragraph (d) to section 174(1), which has been suggested by the Credit Grantors Association, which would read:

(d) a claim or demand for or in respect of money, debt account, covenant or otherwise, in excess of one thousand dollars if the creditor having such claim or demand consents to come under this part?

This would mean that if the amount of the debt is over \$1,000 the creditor could also come under this act without the formality of a judgment, as if there were a judgment.

Senator BOUFFARD: Provided in paragraph (b).

Senator VIEN: Provided in paragraph (b). The clerk will assess the validity—

The CHAIRMAN: Mr. MacDonald would like to think about it for a moment.

Senator VIEN: Thank you.

Mr. MACDONALD: Mr. Chairman, as I understand it, the proposed paragraph (d) will bear the same relationship to the present paragraph (c) as the present paragraph (b) bears to paragraph (a).

The CHAIRMAN: That is right.

Mr. MACDONALD: The omission of this very provision puzzled us in the drafting of the bill. It did not occur in either the Manitoba or Alberta acts. We asked the Manitoba authorities what, in their view, was the explanation of it, and they said it was related to the jurisdiction of the county district court, that if you look at (b) which provides that a judgment in excess of \$1,000 may come under the act with the consent of the creditor you find that the claim has already been crystallized in a judgment of a competent court, and they said, "if you look at (d) you will see that there is no judgment. It is a claim in excess of \$1,000 and may be in excess of the jurisdiction of the county or district court, and you are bringing it before the clerk of the court." That is why that was left out.

The CHAIRMAN: If you are stopping there, you are not under the jurisdiction of a county or district court. Under the provincial statutes you were. It now comes under Bankruptcy Law. So that is not a sufficient reason.

Senator CROLL: There wasn't sufficient reason there. What relations are there between the jurisdiction the clerk had and the county courts had.

The CHAIRMAN: It was a local statute, and there must have been some reason in Manitoba.

Senator CROLL: The clerk was given certain jurisdiction under the act which has no relation to the Courts.

The CHAIRMAN: He might have been what we call a persona designata.

Senator CROLL: There must be some reason for leaving it out, but it cannot be the reason you suggest, Mr. MacDonald.

Mr. MACDONALD: I can only say we don't understand completely the basis of the reason unless there was some reluctance to have the clerk of the county court deal with a claim not crystallized in a judgment and that might not be within the jurisdiction of the county court itself. I merely say that is the explanation they gave us.

Senator VIEN: From the provincial point of view I think they were right, but I think under a Bankruptcy Act, why should we deprive the creditor of more than a thousand dollars from requesting the privilege of becoming a part of a consolidation order. The only thing is to allow creditors of a claim exceeding one thousand dollars to be included in a consolidation order.

The CHAIRMAN: If you are going to draw a line and say the maximum is a thousand dollars, no matter what the sum is that you claim, I can understand that, but, as you say, if there is a judgment in excess of one thousand dollars, and if you want to come in and join in the consolidation order you can, but if before it is crystallized in the formal judgment you cannot come in, there doesn't seem to me to be any rhyme or reason in that.

Senator ASELTINE: It would be affected by the jurisdiction of the county court.

The CHAIRMAN: This is not affecting county courts at all. This is federal legislation. We are merely using their office.

Senator ASELTINE: In Saskatchewan and Manitoba the jurisdiction was limited, and this might be increasing it.

Senator CROLL: All I can get from what he said was that the jurisdiction was a status symbol and that they could not raise the clerk to a greater status than the county court judge.

Senator BROOKS: I didn't grasp anything over a thousand dollars.

Senator CROLL: I understood the usual practice was that the man dropped everything above a thousand dollars and then got in on this. I have always been under the impression that in 1949, despite the fact the act was looked over, it was a bit butchered, in that it seemed to be hurriedly done, but I wasn't here, so it is easy for me to criticize.

The CHAIRMAN: You are exactly 150 per cent wrong. I thought the consideration was too long at that time.

Senator CROLL: I thought we should be careful on this without adopting what is obviously easy to adopt to get the bill reported.

The CHAIRMAN: This is something which was never in the Bankruptcy legislation and we are bringing it from the provinces and the question is whether the committee can add in what has been suggested, or if we don't add it in, you are forcing the man who has more than a one-thousand dollar claim to get a judgment, and he brings it in and gets consent and is part of the consolidation order.

Senator CROLL: They have had experience with this in Alberta and Manitoba.

Senator HIGGINS: If it is not brought in what happens?

The CHAIRMAN: He has to spend some money to get a judgment, and then he can come in. He could take bankruptcy proceedings.

Senator BOUFFARD: I think it would be favourable to bring that in.

Senator VIEN: I so move.

Senator BOUFFARD: I second it.

The CHAIRMAN: Is there any objection to it?

Mr. MACDONALD: I don't see any objection.

The CHAIRMAN: The suggestion is we add in as paragraph (d) of 174 the following:

(d) a claim or demand for or in respect of money, debt, account, covenant or otherwise, in excess of one thousand dollars if the creditor having such claim or demand consents to come under this Part.

It is so moved.

Carried.

The CHAIRMAN: I take it that subject to that, section 174 carries.

Carried.

The CHAIRMAN: Mr. MacDonald, wants to speak to some element there.

Mr. MACDONALD: Representations have been made direct to the department and through Senator Brooks, I believe, if I am not mistaken, Senator Brooks, that in the interim there has been a new act passed in the province of Alberta relating to mechanics' liens and having a slight variation in the title. It is The Mechanics Lien Act, 1960, and they request that there be a reference to that act which would come in line 35, and it would read

"under the Mechanics' Lien Act, . . ."

as it now is and then would be inserted these words:

—or The Mechanics Lien Act, 1960.

Senator CROLL: What do you know about The Mechanics Lien Act, 1960, Mr. MacDonald?

The CHAIRMAN: That is in the province of Alberta.

Senator CROLL: It may be a different act. I assume that they did look into the Mechanics' Lien Act when they presented this bill, that they looked at it to see how it would conform, but this is something new. I am asking what the difference is between the Mechanics' Lien Act and The Mechanics Lien Act, 1960.

Mr. MACDONALD: Senator Croll, we did not make a close comparison of the two acts. I can only say that the new act refers to the subject matter of mechanics' liens, and I do not believe that the inclusion of the new title makes any difference in principle to the section.

Senator BOUFFARD: Was the old act repealed?

Mr. MACDONALD: It was not repealed outright in this sense that it still applies to certain situations.

Senator BROOKS: They simply wanted to bring it up to date.

The CHAIRMAN: That is right. I see no harm in mentioning both statutes because it is an exclusion unless the creditors consent to come in. Is it "Mechanics Lien" or Mechanics Liens"?

Mr. MACDONALD: It is The Mechanics Lien Act, 1960, without an apostrophe.

There is a further point. At the request of the draftsman, and for the sake of uniformity, if this change is made he has suggested that in each case the word "the" wherever it occurs—it occurs first in line 33 preceding "Masters and Servants"—be capitalized and italicized; similarly in line 35; and similarly in line 36 where it should read, "The Garagemen's Lien Act".

The CHAIRMAN: And similarly in line 41, I suppose?

Mr. MACDONALD: That is correct.

The CHAIRMAN: And similarly in line 43?

Mr. MACDONALD: That is correct.

Senator VIEN: In other words, wherever there occur the words "Mechanics' Lien Act" you would add "1960"?

The CHAIRMAN: With those changes shall section 174 carry?

Hon. SENATORS: Carried.

Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel: I notice what appears to be an inconsistency. It is the Mechanics' Lien Act in—

The CHAIRMAN: That is in Manitoba.

Mr. HOPKINS: What is the difference there?

Mr. MACDONALD: The titles I have are as follows: in the case of Alberta it is The Masters and Servants Act, without any apostrophes and the word "The" is part of the title. Then comes The Mechanics' Lien Act, with "The" part of the title and with "s" apostrophe; next, The Mechanics Lien Act, 1960, with "The" part of the title, no apostrophe in "Mechanics" but a comma after the word "Act". Then The Garagemen's Lien Act with the word "The" part of the title and an apostrophe before the "s". In the case of Manitoba it is The Mechanics' Lien Act with the word "The" part of the title and an apostrophe after the "s". In the case of The Wages Recovery Act the "The" is part of the title and there is no apostrophe.

The CHAIRMAN: Section 174 as amended is carried. Section 175 is one of the sections with respect to which I have no suggestions for changes before me. Shall section 175 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: With respect to section 176 you will see a suggestion for a change in the draft of Mr. MacDonald, and a similar change was suggested by the Credit Grantors Association. Mr. MacDonald suggests adding the following subsection to section 176 as subsection (4) on page 4 of the bill, which would read as follows:

(4) The register referred to in this section shall be separate from all other books and records kept by the clerk and shall be available to the public for inspection, free of charge, during the hours when the office of the clerk is open to the public.

Senator ASELTINE: There would not be any objection to that.

Senator HUGESSEN: It is so moved, Mr. Chairman.

The CHAIRMAN: Does section 176 together with the new subsection (4) which I have just read carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Mr. MacDonald has no comment with respect to section 177, but the Credit Grantors Association has suggested an amendment for consideration. This deals with objections by creditors, and that association has asked that a further subsection be added, or that subsection (3) be amended so as to read as follows:

(3) where an objection has been filed by a creditor, the clerk shall forthwith, by registered mail, give notice of the objection and of the time and place appointed for the hearing thereof to the debtor and to each creditor named in the affidavit filed in connection with the application specifying the creditor whose claim has been objected to under subsection (1).

The only difference between this suggested amendment and the present subsection in the bill is that the notice, by this proposed amendment, will go to every creditor.

Senator CROLL: Under the amendment?

The CHAIRMAN: Under the amendment proposed by the Credit Grantors Association the notice of objection will have to go not only to the creditor and the debtor but to every other creditor who is registered.

Senator BOUFFARD: It is an additional cost; that is all.

Senator ASELTINE: Yes, more costs.

Senator ISNOR: Why should it not go?

Senator VIEN: Every creditor should be advised.

Senator CROLL: It seems to me that it is more than a matter as between the debtor and the creditor. It is a matter that involves every creditor, and they all should have notice.

Senator ASELTINE: It may mean 50 notices being sent out.

Senator CROLL: Yes, but they are all entitled to it.

The CHAIRMAN: It will be recalled that Mr. MacDonald's comment on this the other day was twofold; (1) that you are increasing the costs, and (2) that surely the debtor would be keen to keep down the amount of the creditors' claims, and he would be a good battler and therefore it was unnecessary to notify the other creditors. However, I am in the hands of the committee. What is the view of the committee? Shall section 177(1) carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Shall subsection (2) of section 177 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Shall subsection (3) of section 177 carry, or shall it carry as amended?

Senator VIEN: I understand that what Mr. MacDonald suggested was that subsection (3) would be repealed.

The CHAIRMAN: No, it was not Mr. MacDonald; it was the Credit Grantors Association that suggested it.

Senator VIEN: I would move that the proposed amendment to subsection (3) be adopted.

The CHAIRMAN: Is that agreed?

Hon. SENATORS: Agreed.

The CHAIRMAN: It is understood that there will be consequential amendments later because of this change.

We have no submissions with respect to section 178. Shall section 178 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: You have no comment, have you, Mr. MacDonald?

Mr. MACDONALD: I have no comment, Mr. Chairman.

The CHAIRMAN: We have no submissions with respect to section 179. You have nothing to say with respect to that, Mr. MacDonald?

Mr. MACDONALD: No, Mr. Chairman.

The CHAIRMAN: Shall section 179 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: There are no submissions as to changes to section 180. Have you any comments, Mr. MacDonald?

Mr. MACDONALD: No, Mr. Chairman.

The CHAIRMAN: Shall section 180 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: We have no submissions with respect to section 181. Have you any comments, Mr. MacDonald?

Mr. MACDONALD: No comment, Mr. Chairman.

The CHAIRMAN: Shall section 181 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: We have no submissions with respect to section 182. Have you anything to say about this section, Mr. MacDonald?

Mr. MACDONALD: No, Mr. Chairman.

The CHAIRMAN: Shall section 182 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: On section 183, there is no comment before me. Have you anything to say, Mr. MacDonald?

Mr. MACDONALD: No.

The CHAIRMAN: Shall section 183 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: On section 184, there is no comment before me. What have you to say, if anything, Mr. MacDonald?

Mr. MACDONALD: Nothing, Mr. Chairman.

The CHAIRMAN: Shall section 184 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: On section 185, I have no submissions here. You have no comment, Mr. MacDonald?

Mr. MACDONALD: No.

The CHAIRMAN: Shall section 185 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: On section 186, you will notice in Mr. MacDonald's memorandum that there is a suggestion to delete subsection (3) of section 186 and substitute the language which you will see in his memorandum. The proposed new subsection (3) would read as follows:

The clerk may issue a writ of execution or certificate of judgment in respect of a consolidation order and cause it to be filed in any place where such writ or certificate may bind or be a charge upon land or chattels.

Senator CROLL: The reason is, of course, that you want some certificate that is binding upon somebody.

Senator HUGESSEN: It was in the draft in the province of Manitoba, to conform to their legal language, where they talk about "certificate of execution".

The CHAIRMAN: We have added "certificate of judgment".

Senator ASELTINE: I think the law of Manitoba had "writ of execution," that is, it is only issued when you have obtained a certificate of judgment.

The CHAIRMAN: That is why we have added these words. Shall section 186 carry, with subsection (3) amended in the manner described?

Senator BOUFFARD: In respect to subsection (3) of section 186, there is a privilege created on the assets, on account of that paragraph? Would it affect any other privilege that might have been registered on these assets before?

The CHAIRMAN: The priority in registration would govern.

Senator BOUFFARD: It does not say so here.

The CHAIRMAN: It could not superimpose this on the priorities already established. It could only attach to the interest and the nature of the interest and the qualifications on the interest as affected at the time.

Senator BOUFFARD: If the privilege that has been on those assets before is not affected, I have no objection.

The CHAIRMAN: Shall the section as amended carry?

Hon. SENATORS: Carried.

The CHAIRMAN: In regard to section 187, the Credit Grantors Association made some suggestion. Have you had a chance to look at it, Mr. MacDonald?

Mr. MACDONALD: This is the first time I have seen it, now.

The CHAIRMAN: I think the purpose of the suggested change in section 187 is to have notice given to every creditor, whenever a new creditor is being added to the consolidation order. Otherwise, the debtor could arrange with a person to whom he was not indebted, to make a claim in the consolidation order for the purpose of defrauding the registered creditors named in the order.

Senator CROLL: We did make a change. Where a man disputed, everyone was notified. Now, if someone is added, they suggest we do the same thing. That makes sense. In both instances I think he should be notified.

The CHAIRMAN: Really, the words that are inserted are; "and to each registered creditor". If we substitute for subsections (1) and (2) in the bill the subsections as they appear in this amendment, which I have and which I will read to you, it accomplishes that result, the only additional thing being the requirement of giving notice to each registered creditor whenever a new creditor has been added to the consolidation order. Would you like me to read it?

Senator CROLL: Yes.

The CHAIRMAN: It reads:

187. (1) Where at any time before the payment in full of the claims against a debtor under a consolidation order, the clerk is notified of a claim to which this Part applies that is not entered in the order, he shall, upon notice to the debtor and the creditor and to each registered creditor and subject to subsection (2),

Senator CROLL: Would you stop there, Mr. Chairman. What does he mean by "each registered creditor"? How does a creditor register? He usually files, not registers.

The CHAIRMAN: "Files"? They call it "Registered" here.

Senator CROLL: Under the act, do they call it "register"? We would get ourselves mixed up, otherwise. Is that the proper term? Does he "file" or "register"?

Senator HIGGINS: The clerk of the court does it.

Senator CROLL: Does it say the "registered creditor"?

The CHAIRMAN: Yes.

Senator CROLL: Very well.

The CHAIRMAN: This continues:

- (a) settle the amount owing to the creditor;
- (b) where he deems it necessary to do so, vary the amounts to be paid by the debtor into court and the times of payment thereof in order to provide for the new claim; and
- (c) enter the matters referred to in paragraphs (a) and (b) in the register.

(2) Where the debtor or any registered creditor disputes the claim of a creditor described in subsection (1), the clerk shall on notice of motion refer the matter to the court and the decision of the court shall be entered in the register.

Is that agreed?

Senator CROLL: It occurs to me that there is a possibility in this. I wonder if this has crossed anyone else's mind? The new claim is filed and a creditor decides to fight the claim. The debtor says, "I do not dispute the claim at all".

One of the creditors decides to fight the claim and we are into a first-class legal action at the cost of the estate, without really there being any basis for it except that it is a dispute between two creditors rather than with the debtor. What happens there? Does he have the right to do it anyway, or do we create that right?

The CHAIRMAN: Under the section as it stands, the debtor disputes the claim and the clerk refers it to the court.

Senator CROLL: But in this case the debtor is not disputing it, the creditor is. It is a different thing entirely. The debtor says it is a good claim but one creditor says it is not a good claim and that he will take it to the courts. He takes it to the courts at the expense of the debtor.

The CHAIRMAN: No, it is the clerk who does it.

Senator HUGESSEN: The courts would decide where the costs should go, if it is a dispute between two creditors.

Senator CROLL: What difference does it make what the courts decide? There are additional costs. There would still be costs. No lawyer takes it up on any other basis.

Senator HUGESSEN: Not if it is a dispute between creditors.

Senator CROLL: There are the costs of defending it.

The CHAIRMAN: They would be the costs of one or other of the creditors, not of the debtor.

Senator HIGGINS: One registered creditor could force the matter into court, although the others did not want that. Who is going to pay the costs? He does not take the action.

Senator CROLL: Whoever takes the action. He does not have to pay. That is the point I am making. It is a point which just struck me.

Senator HUGESSEN: I think we can leave that to the discretion of the court. Obviously the court is not going to charge costs against a debtor's estate in respect of a dispute between two creditors.

Senator CROLL: You have two creditors fighting among themselves.

The CHAIRMAN: They could fight among themselves about it until the cows come home, but it is a matter of costs between them.

Senator CROLL: If one creditor comes into court, and there is no provision for costs?

Senator BROOKS: If he has a good claim, why should he not?

Senator HIGGINS: All the creditors except one agree that a claim is all right. That one registered creditor says "no" and forces it into court.

The CHAIRMAN: He disputes the claim and there is a hearing and the decision is, for example, that the claim is a good one. Then the protesting creditor pays the costs.

Senator HIGGINS: It does not say that.

The CHAIRMAN: That is a matter of administration in the court.

Senator HIGGINS: Does it say that a registered creditor has a right to make that objection?

The CHAIRMAN: Of course he has the right to make the objection, but if he loses—

Senator HIGGINS: He does not take the action; it is the clerk who takes the action.

Senator CROLL: He forces the trustee to take the action.

I think there is that element of danger there, in what we are doing.

Senator HIGGINS: Surely if there were one objection the clerk of the court would decide whether the objection was valid or otherwise?

The CHAIRMAN: Well, the amendment proposed reads in this way:

Where the debtor or any registered creditor disputes the claim of a creditor described in subsection (1), the clerk shall on notice of motion refer the matter to the court and the decision of the court shall be entered in the register.

All you have is a record of his.

Senator VIEN: He does not take part in the legislation other than listening to what is being done.

The CHAIRMAN: That is right.

Senator CROLL: You see the danger we leave ourselves open to. Three new claims are filed and there are three new disputes. Then it goes to court, and it may take six months before a decision is made on those three claims, perfectly good claims. If it is left to them to decide, I think there is less danger.

Senator HIGGINS: Why not make it that the clerk "may", instead of "shall"? Should not the clerk of the court have some discretion?

The CHAIRMAN: No. It says, "the clerk shall on notice of motion refer the matter to the court". It is the clerk who refers the matter to the court.

Senator HIGGINS: Then give him the option, and instead of "shall" make it "may".

Senator CROLL: You would be giving the clerk far too much power. He does not want to sit in that position of deciding yes and no and passing judgment. It is not his responsibility. We either do it, or we don't. I think there is some danger in this.

Senator ISNOR: What is the danger? It would be entered in the register.

Senator CROLL: The danger is in the time elapsed. Also, sometimes it could be a subterfuge. If the debtor disputes it, that is one thing; but if he says it is okay, that is the end of it.

The CHAIRMAN: This amendment simply extends what the bill itself provides. That is, it is the clerk who gives the notice of motion to the court to determine the validity. In all kinds of proceedings that is being done all the time. It is done in the surrogate court and in bankruptcy. In bankruptcy, if there is some dispute it is referred to the bankruptcy judge and he makes a decision.

Senator CROLL: I agree. But here under the act the debtor is always there before unsatisfied creditors, and now there is a third person comes in and disputes the claim.

Senator HIGGINS: Why not say that when the debtor disputes the claim the clerk "shall"; and where the creditor disputes the claim the clerk "may"?

The CHAIRMAN: No.

Senator CROLL: No.

Senator BOUFFARD: Somebody has to decide.

Senator VIEN: The clerk must.

Senator CROLL: "Shall" means "must".

The CHAIRMAN: In section 187 we were dealing with the present subsections (1) and (2), to be struck out, and the amendment which I read is to replace that. The additional provision is simply to have notice given to every creditor whenever a new creditor is being added to the consolidation order. Then we have subsections (3) and (4). Shall they pass as they are?

Hon. SENATORS: Carried.

The CHAIRMAN: Now section 188. There are no suggestions before me. Have you any comment, Mr. MacDonald?

Mr. MACDONALD: No.

The CHAIRMAN: Shall section 188 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Section 189. There is a suggestion of an amendment. I think Mr. MacDonald objected to this suggested amendment the other day. The amendment which is proposed by the Credit Grantors Association is as follows:

This amendment provides that on the happening of certain events the consolidation order will automatically be rescinded. Mr. T. D. MacDonald objected to this suggested amendment on the ground that the event occasioning the rescission of the order might not be the fault of the debtor and there might be extenuating circumstances. The suggested amendment has been drafted in such a way that the events of default are restricted to matters within the control of the debtor except clause (c) which pertains to a creditor with a judgment in excess of \$1,000 bringing a proceeding against the debtor for the recovery of money, which proceeding would be in direct competition with any efforts expended by the clerk of the court under the consolidation order.

Now, frankly, the amendment in the way in which it is drawn here, which I have not yet read to you, bothers me. In section 189 you are dealing with default of the debtor, and the language used here is, in this suggested amendment, "then the consolidation order is *ipso facto* terminated", and that language bothers me.

Senator ASELTINE: I would leave it where it is.

Senator CROLL: I move the adoption of section 189.

The CHAIRMAN: Does the committee agree?

Hon. SENATORS: Agreed.

The CHAIRMAN: Section 190. Have you any comment, Mr. MacDonald?

Mr. MACDONALD: No.

Senator ASELTINE: Carried.

The CHAIRMAN: Shall the section carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Section 191. There is a suggestion from the Credit Grantors Association. Section 191 deals with the disposition of moneys paid into court. The Credit Grantors Association has suggested an amendment that would add the following provisions:

Notwithstanding anything in this Part contained, every consolidation order made pursuant to the terms of this Part, which shall include any variance to a consolidation order shall call for payment into the court by the debtor of not less than,

- (a) in the case of an unmarried man thirty per cent of the debtor's earnings for the period in question after deducting therefrom a basic exemption equal to twelve dollars per week; and
- (b) in the case of a married man thirty per cent of the debtor's earnings for the period in question after deducting therefrom a basic exemption equal to twenty-four dollars per week.

Senator CROLL: That is attempting to incorporate the Lacombe Law. I think this section should be left as it is. I move that the section be carried.

The CHAIRMAN: What is the feeling of the committee? Shall the section carry as is?

Hon. SENATORS: Carried.

The CHAIRMAN: Now, section 192; I have no suggestions. Have you, Mr. MacDonald?

Mr. MACDONALD: No, Mr. Chairman.

The CHAIRMAN: Shall section 192 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Section 193. Mr. MacDonald has a proposed amendment, striking out lines 13 to 16, and substituting therefor:

"pursuant to such consolidation order and have not yet been distributed to the registered creditors shall thereupon be distributed among such creditors by the clerk in the proportions to which they are entitled under the consolidation order."

The CHAIRMAN: This is dealing with a situation where bankruptcy intervenes and what happens with respect to the money that is in the hands of the clerk at that time.

Senator CROLL: At the moment, bankruptcy intervenes and the Bankruptcy Act takes over?

The CHAIRMAN: Yes; but I would think this: if we provide that specifically in those circumstances the moneys then in the hands of the clerk shall be distributed rateably among those who are parties to the consolidation order, it would be effective legislation.

Senator CROLL: Would it?

The CHAIRMAN: When I say effective, I mean legally; it would be constitutional. But once bankruptcy intervenes there may be a larger area of creditors than just those in the consolidation order, and why should the ones in the consolidation order have a preference? What have you to say about that, Mr. MacDonald?

Mr. MACDONALD: Mr. Chairman, this change arises I think from a suggestion made by Senator Drouin at a previous meeting when he compared the provision in the present bill with the comparable provision in the Lacombe Law, the provision under the Lacombe Law being that right to the money immediately upon it being paid into court crystallizes in the creditors who are then on the record.

Senator HUGESSEN: Mr. Chairman, I may say that our courts in the province of Quebec have overruled that, stating that it is unconstitutional once the provisions of the Bankruptcy Act intervene.

Senator CROLL: Mr. Chairman, I move the adoption of section 193 as is.

The CHAIRMAN: I may be a little sticky on good English, but in subsection (3) it says:

None of the provisions of Parts I to IX apply to proceedings under this Part.

I think it should read, "applies".

Senator HUGESSEN: On this proposed amendment, Mr. Chairman. You will remember we were told by some of the witnesses that where a man had accumulated a certain amount over two or three months in this fund with the clerk of the court it was sometimes rather a temptation to a dishonest trustee to slap in a bankruptcy proceeding and get the money right away and get his own costs out of it.

Senator CROLL: That may be.

Senator HUGESSEN: This amendment would avoid that.

Senator CROLL: Yes, but it would create other problems. In the first place we have to assume there are dishonest trustees, and I am not prepared to

assume that with the people here. I assume that no one would do that. On the other hand we are creating a new sort of preferred creditor, and people are going to be preferred because they came in early. That should not be.

Senator HUGESSEN: I do not see why not.

Senator CROLL: The debtor may not have disclosed all his creditors and the early ones will get all the money and the late ones will get nothing.

Senator HUGESSEN: Well, these people filed their claims in perfectly good faith and the money has been distributed to pay them.

Senator CROLL: But the money is to pay all creditors. The debtor may not have disclosed all of his creditors.

The CHAIRMAN: Other creditors may be in existence but they may have come in late and that would not entitle them to participate in the consolidation order.

Senator CROLL: Mr. Chairman, wasn't there a submission made here by one of the attaches of a foreign embassy?

The CHAIRMAN: Yes, of Germany.

Senator CROLL: It was a legitimate complaint in my view and the sort of thing that could badly upset foreign creditors and foreign businessmen because they did not know in time.

Senator HUGESSEN: I come from the province of Quebec and I would like to have this provision in because it would bring in effectively, legally and constitutionally, something that the Lacombe Law tries to do and cannot.

Senator VIEN: Mr. Chairman, I would move adoption of the amendment.

The CHAIRMAN: I already have a motion to approve the section.

Senator VIEN: I move that the amendment be adopted.

The CHAIRMAN: I have to deal with Senator Croll's motion first.

Senator BURCHILL: Mr. Chairman, just for information, if we pass this section as it is without the amendment does it mean that in the event of a bankruptcy ensuing the original creditors registered under the consolidation order do not rank first?

The CHAIRMAN: That is right. The money is available for all creditors.

Senator VIEN: Mr. Chairman, should we not vote on the amendment first? A motion was made and then there was a sub-motion.

The CHAIRMAN: There is a motion to approve section 193.

Senator BOUFFARD: But there is an amendment to that motion.

Senator VIEN: The amendment proposed is that section 193 be not adopted but that the amendments to section 193 be adopted.

Senator BOUFFARD: And that is an amendment to the main motion.

The CHAIRMAN: We will deal with it in this fashion. The amendment refers to all subsections of section 193.

Senator HIGGINS: What have you to say about this, Mr. MacDonald?

The CHAIRMAN: Mr. MacDonald was proposing an amendment along the same lines.

Mr. MACDONALD: Mr. Chairman, here again these amendments are brought in as a drafting exercise, but on the merits there was considerable discussion about these the last day. Perhaps I might remind honourable senators it was pointed out that on the one hand if the creditors had approached the clerk immediately before the intervening bankruptcy and said, "That is our money and we want it distributed," they would have got it immediately. So, in a sense, it is purely accident that they did not do that and that bankruptcy intervenes and changes the entitlement to the money. That argument, I think,

points to the logic of the amendment by saying that once the money is paid into court, as under the Lacombe Law, it belongs to creditors on the record. On the other hand, if you took to the case of a debtor who had money on his desk to pay a creditor on a certain day, and it happens that the creditor did not get around that day and bankruptcy intervened, the answer to the creditor would be that you did not get here yesterday; if you did you would have been paid, but now the money has vested in the trustee in bankruptcy.

It was pointed out, and I think this was rather significant, that where there was a fund in the hands of the clerk of the court under the consolidation order there would be a certain temptation on the part of any trustee who was so minded, and this is not impeaching trustees generally but there are certain irregularities that have come up, there would be a certain temptation on his part perhaps to go and say, "Now, there is some money that I can get my hands on to pay my fees and the cost of the administration of the estate and I am going to see the debtor and, notwithstanding that the consolidation order is working out all right, I am going to encourage him to go into bankruptcy so that money will be transferred to me and I will have a profitable estate to administer."

The CHAIRMAN: May I express a viewpoint: It strikes me that if we do not go along with this amendment that we are taking some of the bona fides away from the consolidation order, some of its inherent strength and attractiveness. If the creditors come in following a consolidation order and make a petition in bankruptcy that throws the assets open to all the creditors and takes away some of the attractiveness of that procedure. On balance I would be inclined to agree with the amendment. I should point out to that subsection (2) of the amendment as proposed by the Credit Grantors Association would strengthen the consolidation order. Their proposal on this reads:

While a debtor is not in default under the terms of a consolidation order, the debtor shall not make an assignment pursuant to Section 26 and no registered creditor shall file a petition pursuant to section 21.

Senator VIEN: The sub-motion before the Chair is to adopt the amendment.

The CHAIRMAN: Yes, but what I am pointing out is what is the content of each one. Subsection (1) contains a principle which I have just indicated I think is a reasonable one, and it gives the bona fides to a consolidation order. I should like to ask for a vote on the subsections separately, if you do not mind.

Hon. SENATORS: Agreed.

The CHAIRMAN: Shall subsection (1) of section 193 carry? It is in the following language:

Where a debtor, in respect of whom a consolidation order has been issued under this Part, makes an assignment pursuant to section 26 or where a receiving order is made against him under section 21 or where a proposal by such debtor is approved by the court having jurisdiction in bankruptcy under section 34, any moneys that have been paid into court pursuant to such consolidation order shall forthwith be distributed by the clerk to the registered creditors pursuant to section 191.

Shall that subsection carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Subsection (2), as proposed, is:

(2) While a debtor is not in default under the terms of a consolidation order, the debtor shall not make an assignment pursuant to section 26 and no registered creditor shall file a petition pursuant to section 21.

Senator CROLL: You cannot do that, surely?

The CHAIRMAN: Is there any further discussion on that?

Senator CROLL: I move the rest of the section; this is merely a proposal.

The CHAIRMAN: This is part of Senator Vien's motion.

Senator CROLL: No, I do not see it in here.

Senator VIEN: I moved subsections (1), (2) and (3). We have adopted subsection 1, and we are now on subsection 2.

Senator CROLL: That is not MacDonald's drafting.

The CHAIRMAN: This is on the suggestion of the Credit Grantors Association, and that is why I read the amendment. Does the committee understand what this amendment will do?

Senator CROLL: No, I do not understand it.

The CHAIRMAN: Mr. MacDonald, have you any view to express on this?

Mr. MACDONALD: This is the proposed change that would prevent the debtor from going into bankruptcy while the consolidation order arrangement is current?

The CHAIRMAN: It is an extraordinary thing.

Mr. MACDONALD: That was discussed considerably, as honourable senators will remember, at the last meeting. You may remember the discussion involving the expression "treadmill." I think that perhaps Senator Drouin led the discussion. It was suggested that Part X had the effect of putting the debtor on a treadmill, because he might find himself in a position where his debts were such that he could never hope to pay them all in full. The reply that was given by several senators, and I think I mentioned it myself as well, was that he did not have to go under the consolidation arrangement to start with, if he did not wish to, he could have gone into bankruptcy if the bankruptcy conditions applied. Even having gone under an arrangement under Part X he could still, if his position were hopeless, make an assignment in bankruptcy himself or a creditor could still put him into bankruptcy. So it would seem that this proposed change might bring about that treadmill situation.

Senator BROOKS: Was not the treadmill idea for the three years that were given for him to pay under this order?

Mr. MACDONALD: I think, Senator Brooks, as I remember it, that the treadmill argument was that under Part X he had eventually to pay off all his debts in full and that did not have to be restricted to a three-year arrangement. With the approval of the court it could be an arrangement that went on beyond three years.

Senator CROLL: How do you deprive a man of his inherent right to go into bankruptcy, when he can no longer meet his obligations?

The CHAIRMAN: Those are all different viewpoints. By raising them it appears you understand the scope of the subsection, and I think you should be ready for a vote on it. Shall subsection (2) as proposed by Senator Vien carry? I will read it again.

Senator HUGESSEN: How does that read?

The CHAIRMAN: I will read it again:

(2) While a debtor is not in default under the terms of a consolidation order, the debtor shall not make an assignment pursuant to Section 26 and no registered creditor shall file a petition pursuant to section 21.

Senator HUGESSEN: That is very much against the views of the Montreal Board of Trade, as they appeared before us last week. They raised this tread-

mill argument, and Mr. McQuillan said, as reported at page 111 of the proceedings:

So that as long as any form of Part X of the act might retain for the debtor his right to use the general provisions of the Bankruptcy Act if his position warrants it, then—

—we would object to it.

The CHAIRMAN: If the debtor feels that he wants to use the general provisions of the Bankruptcy Act he can create a default, so it makes it meaningless.

Senator HUGESSEN: It does.

The CHAIRMAN: Are you ready for a vote on subsection (2)? Those in favour of it? Contrary?

Subsection (2) fails.

We have subsection (3), as proposed by Senator Vien.

Senator HUGESSEN: Do not we have subsection (2) in the bill? The amendment to subsection (2) fails.

Senator CROLL: The same thing would apply to subsection (3).

Senator VIEN: We have not discussed subsection (3) as yet.

The CHAIRMAN: You have voted on subsection (2). Now we come to subsection (3). The language of subsection (3) in Senator Vien's amendment and the language in the bill are the same, so I should think it would be quite easy for you to take your choice and vote for both of them—except for "applies" instead of "apply". Does subsection (3) carry?

Hon. SENATORS: Carried.

Senator HUGESSEN: Mr. MacDonald, there was a dispute at the last meeting about the wording of subsection (3), and it was suggested that it might not mean exactly what it said. Have you considered that any further?

Mr. MACDONALD: Yes, I did consider it, Mr. Chairman, and I came back to the same view I expressed at the last committee meeting, that the two subsections were quite clear and no change was required.

The CHAIRMAN: Section 194. We have no submission on that. Shall it carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Section 195. We have no submission. Shall it carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Section 196—no submission. Shall it carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Section 197?

Hon. SENATORS: Carried.

The CHAIRMAN: Section 198?

Hon. SENATORS: Carried.

The CHAIRMAN: Shall clause 4 of the bill carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Shall I report the bill as amended?

Hon. SENATORS: Carried.

—The committee thereupon adjourned.



First Session—Twenty-fifth Parliament
1962

THE SENATE OF CANADA

PROCEEDINGS

OF THE
STANDING COMMITTEE
ON

BANKING AND COMMERCE

To whom was referred the Bill S-12, intituled:
“An Act to incorporate Allstate Life Insurance Company of Canada”

The Honourable SALTER A. HAYDEN, Chairman

WEDNESDAY, NOVEMBER 14, 1962

WITNESSES:

Mr. K. R. MacGregor, Superintendent of Insurance and Mr. John W. Graham representing the petitioners

REPORTS OF THE COMMITTEE

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THE STANDING COMMITTEE ON
BANKING AND COMMERCE

The Honourable Salter Adrian Hayden, *Chairman*

The Honourable Senators

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Baird	Hayden	Paterson
Beaubien (<i>Bedford</i>)	Higgins	Pearson
Beaubien (<i>Provencher</i>)	Horner	Pouliot
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Davies	McCutcheon	Turgeon
Dessureault	McKeen	Vaillancourt
Drouin	McLean	Vien
Emerson	Molson	Willis
Farris	Monette	Woodrow—50.
Gershaw		

(Quorum 9)

*Ex officio member.

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Thursday, November 8th, 1962.

Pursuant to the Order of the Day, the Honourable Senator Willis moved, seconded by the Honourable Senator Haig, that the Bill S-12 intituled: "An Act to incorporate Allstate Life Insurance Company of Canada", be read the second time.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Willis moved, seconded by the Honourable Senator Haig, that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative.

J. F. MacNEILL,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

WEDNESDAY, November 14, 1962.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 10.30 a.m.

Present: The Honourable Senators:—Hayden, *Chairman*; Aseltine, Croll, Davies, Drouin, Gershaw, Gouin, Irvine, Isnor, Kinley, Lambert, McKeen, Reid, Taylor (*Norfolk*), Thorvaldson, Turgeon, Vaillancourt and Willis.

In attendance: Mr. E. R. Hopkins, Law Clerk and Parliamentary Counsel and the Official Reporters of the Senate.

Bill S-12, intituled “An Act to incorporate Allstate Life Insurance Company of Canada” was considered.

On motion of the Honourable Senator Croll it was Resolved to report recommending that authority be granted for the printing of 800 copies in English and 200 copies in French of the Committee’s proceedings on the said Bill.

Mr. K. R. MacGregor, Superintendent of Insurance and Mr. John W. Graham, representing the petitioners were heard in explanation of the Bill.

It was Resolved to report the Bill without any amendment.

At 11.00 a.m. the Committee adjourned to the call of the Chairman.

Attest.

James D. MacDonald,
Clerk of the Committee.

REPORT OF THE COMMITTEE

WEDNESDAY, November 14, 1962.

The Standing Committee on Banking and Commerce to whom was referred the Bill (S-12), intituled: "An Act to incorporate Allstate Life Insurance Company of Canada", report as follows:

Your Committee recommend that authority be granted for the printing of 800 copies in English and 200 copies in French of their proceedings on the said Bill.

All which is respectfully submitted.

SALTER A. HAYDEN,
Chairman.

WEDNESDAY, November 14, 1962.

The Standing Committee on Banking and Commerce to whom was referred the Bill S-12, intituled: "An Act to incorporate Allstate Life Insurance Company of Canada", have in obedience to the order of reference of November 8, 1962, examined the said Bill and now report the same without any amendment.

All which is respectfully submitted.

SALTER A. HAYDEN.
Chairman.

THE SENATE
STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

OTTAWA, Wednesday, November 14, 1962.

The Standing Committee on Banking and Commerce, to which was referred Bill S-12, to incorporate Allstate Life Insurance Company of Canada, met this day at 10.30 a.m.

Senator Salter A. Hayden (*Chairman*), in the Chair.

On a motion duly moved and seconded it was agreed that a verbatim report be made of the committee's proceedings on the bill.

On a motion duly moved and seconded it was agreed that 800 copies in English and 200 copies in French of the committee's proceedings on the bill be printed.

The CHAIRMAN: Honourable senators, we have before us for consideration Bill S-12, an act to incorporate Allstate Life Insurance Company of Canada. All the representatives are here, and Mr. MacGregor, the Superintendent of Insurance, is also present. Our usual practice is to hear him first, and I see no reason to depart from that.

Representing the proposed incorporation and also the U.S. Allstate company we have with us Mr. J. M. Tory and Mr. John W. Graham, who are jointly representing the incorporators in this bill; Mr. John Atkinson, the President of Allstate Insurance Company of Canada; Mr. Charles J. Komaiko, attorney, from Skokie, Illinois, U.S.A., and Mr. R. S. Seiler, attorney, from Skokie, Illinois, both representing the U.S. firm.

Shall we follow our usual practice and hear from Mr. MacGregor first?

Some hon. SENATORS: Agreed.

Mr. K. R. MacGregor, Superintendent of Insurance: Mr. Chairman and honourable senators, the purpose of this bill, S-12, is of course, to incorporate a new Canadian life insurance company. Although a good many bills have been before this committee from year to year to incorporate new Canadian fire and casualty insurance companies, there have not been many new Canadian life insurance companies incorporated during the last 30 years.

Perhaps to bring the bill into perspective it might be well if I made a few comments about the number of life insurance companies transacting business in Canada—Canadian, British and foreign—and the proportions of business that these companies write; that is to say, Canadian companies, on the one hand, and British and foreign companies, on the other.

At the end of 1931, going back 30 years, there were 28 Canadian life insurance companies registered with our department; there were 13 British life insurance companies; and there were 16 foreign life insurance companies, mainly from the U.S.A. The total number of life companies registered with

us at the end of 1931, therefore, was 57. At the end of 1961 the number of Canadian life insurance companies registered with our department was 36, representing a net increase of eight Canadian life companies over that 30-year period. The number of British life insurance companies registered at the end of 1961 was 15, representing an increase of two over the same period. The number of foreign life insurance companies registered at the end of 1961 was 48, representing an increase of 32 over the same period. Consequently, it is clear that the number of new Canadian life companies has not been very great. The number of foreign life insurance companies registered during the last 30 years to begin operations in the life field has been substantial.

Senator ASELTINE: Do they all carry on business?

Mr. MACGREGOR: Yes, Senator Aseltine, they all do, but in greatly varying degrees. That is perhaps the first point I might comment on. Although the number of foreign life companies that have come into Canada in that period is relatively large many of those companies have come in simply to service what we call overflow group business.

Senator ASELTINE: Are they registered and licensed?

Mr. MACGREGOR: They are registered and they operate on a branch office basis in Canada. They are not incorporated in Canada.

Senator CROLL: You mean it is reinsurance?

Mr. MACGREGOR: No, they may have issued a group policy to a concern which has a branch office here and they want the same policy to cover the Canadian section of that company.

The CHAIRMAN: How would you express that in percentages, the foreign business of foreign companies as against Canadian?

Mr. MACGREGOR: Although the number of foreign life insurance companies that have become registered in the last thirty years is quite large, the fact is that the proportion of life business done in Canada by Canadian, British and foreign companies has not altered significantly throughout that whole period. I haven't the proportions at the end of 1931, but I may say that the proportion of life business in force in Canada has for many years been about two-thirds in Canadian companies and one-third in British and foreign life companies. In 1945, 68 per cent of the new life business done in Canada was done by Canadian companies, and during 1961 the proportion was 69 per cent. In other words Canadian life companies do about two-thirds of the total life business done in Canada.

Senator KINLEY: How about foreign business of Canadian companies?

Mr. MACGREGOR: May I answer that in a moment, please.

Senator KINLEY: All right.

Mr. MACGREGOR: Looking at British companies, in 1945 they wrote 2 per cent of the total life business in Canada, and in 1961 they wrote 5 per cent. Then looking at this relatively larger number of foreign life companies, they wrote 30 per cent of the business in 1945, and only 26 per cent of business in 1961. So the proportion of business done in Canada by foreign companies actually has declined a bit over the last thirty years notwithstanding an increase in numbers.

Senator LAMBERT: My understanding is that there is one outstanding American company that does a great deal of business, a bigger percentage of the underwriting than any other company in Canada. It has been stated that it is as much as all the others put together—you know the one I mean, of course.

Mr. MACGREGOR: Well, that situation has changed a bit, and the fact is that one or two Canadian life companies now do the largest volume of life

business in Canada. The company you mention a number of years back did the largest volume of life business in Canada.

Senator LAMBERT: A special class of business they specialized in was group insurance, and I think they still do as much as all the other companies in that field.

Mr. MACGREGOR: That does not hold now. That company, although it does a large volume of business in Canada, does not do as much as some other companies.

Senator LAMBERT: That change has been accentuated in the last five years.

Mr. MACGREGOR: To some extent, but not to any radical extent. I should say about ten years ago the U.S. company did the largest volume of life business in Canada of any single company, but for the last five years a Canadian company has done the largest volume.

Senator McKEEN: Is there any significant change in the control of Canadian companies?

Mr. MACGREGOR: Yes. To answer Senator Kinley's question first. He asked about the volume of life business done out of Canada by Canadian companies. The Canadian companies do as much business out of Canada as all British and foreign companies do in Canada. If one wants to look at it in that way, one would see that Canadian life insurance companies do somewhere in the world a volume of business just about equal to the volume done in Canada by all British and foreign companies.

Another comment that might be of interest is this: although the number of life companies becoming registered in the last thirty years has been quite large, the fact is that the new entrants to the field do not yet do a very large proportion of the business. If one looks at the companies, the life companies, Canadian, British and foreign that were on the scene here in Canada doing business at the end of 1931, and if one looks at the business done by those same companies today, it will be found that the companies that were here in 1931 still do 91 per cent of the total new life business in Canada at the present time, and those same companies that were here in 1931 have in force now 93 per cent of the total life business in Canada.

The CHAIRMAN: That is the total life business done in Canada by British and foreign companies?

Mr. MACGREGOR: No, sir, by all companies. In other words all new entrants to the life field, whether they be Canadian, British or foreign, since 1931, do only 9 per cent of the new business now and have only 7 per cent of the total life business in force in Canada today.

Respecting control of Canadian life companies, Senator McKeen, out of the thirty-six Canadian life companies registered with our department at the present time twelve are controlled out of Canada. Prior to 1929 all Canadian life companies were controlled in Canada. Control of the first Canadian life company to pass occurred in 1929. There was no further change until 1954. Since 1954 control of seven companies has passed to foreign hands, making a total of eight, including the company in 1929. There have been four new companies incorporated in the last five or six years, backed by foreign capital, and that makes up the total of twelve that are now controlled out of Canada.

Senator McKEEN: Could you tell us in rough figures how much of the assets were taken over by foreign control?

Mr. MACGREGOR: I haven't the figure in mind, but I can say this, that the total life business in force in those twelve companies that are foreign-controlled at the present time amounts to only 5 per cent of the total life business in force in Canada in all companies.

Senator McKEEN: Thank you.

Mr. MACGREGOR: It is sometimes said that perhaps we have enough life insurance companies in Canada. Occasionally one hears that we may be approaching the point where we have too many. At the same time I do not think there has ever been an economic iron curtain around Canada so far as the transaction of business is concerned, and in the life insurance field, at least, I think we all have to remember that our Canadian life companies do a very substantial volume of business outside of Canada—in fact, throughout the world.

If one looks at the record of new incorporations here, the number of new companies is certainly quite small. Only eleven have been incorporated since 1931 and seven of those incorporations occurred in the last decade. There were only four in the twenty years between 1931 and 1951, and those four involved the re-incorporation of two provincial companies and the re-incorporation of two Canadian fraternal benefit societies. None of those four in that twenty-year period were really new companies.

Looking at the seven that have been incorporated since 1951, one of those seven was a re-incorporation of a fraternal benefit society; two of them were re-incorporations of provincial companies; and the other four were new companies, but most of those four were incorporated in rather special circumstances.

One of those four was a life re-insurance company which was incorporated as a running mate to a fire and casualty re-insurance company owned abroad, in Switzerland. The second was a somewhat similar situation involving a life company alongside a Canadian mutual fire and casualty insurance company. The third was the incorporation in 1961 of a new life company as a running mate to a Canadian fire and casualty company in a British owned group. The only really new Canadian insurance company that has been incorporated in the last thirty years is the company that was incorporated during the last session of Parliament, the Westmount Life Insurance Company.

Senator CROLL: That was an offshoot from an agency, if I remember.

Mr. MACGREGOR: Yes, that is right. Even that was a rather special case. The agency organization that formed the basis of that company had already on its hands a very large volume of business in Canada.

Senator ISNOR: Before you go on to your next point, Mr. MacGregor, may I ask if there are any restrictions on Canadian companies operating in foreign countries?

Mr. MACGREGOR: With respect to investments or deposits?

Senator ISNOR: Investments or operations of any kind. Are there any restrictions with respect to their doing business in those foreign countries?

Mr. MACGREGOR: I would say, senator, in years gone by there were not many restrictions except in the U.S.A. where the deposit requirements, for example, have always been substantially the same as in Canada. I would say that over the last fifteen or twenty years—in fact, ever since the war—our Canadian life companies have encountered more and more restrictive measures of one kind or another the world over—restrictions taxwise, investmentwise, and even to the point of nationalization in some areas.

Senator CROLL: But when you speak of that, all companies similar to Canadian companies foreign to that country would meet the same restrictions? The restrictions are not particularly pointed at us?

Mr. MACGREGOR: That is right. There is nothing in the nature of discrimination against Canadian companies in any foreign field that I know of.

Senator ISNOR: I have a supplementary question. Are their restrictions any more drastic for Canadian companies than our restrictions are in regard to foreign companies doing business in Canada?

Mr. MACGREGOR: Overall I would say: No.

Senator LAMBERT: May I ask a question? At one time there was a very large volume of business done by Canadian companies in the Orient and China. Has that dwindled very much?

Mr. MACGREGOR: Yes, it has, sir. The Chinese business pretty well disappeared through inflation. The Japanese business was taken over by the Japanese Government just before the last war. The life business in India was nationalized about four years ago, and business in Egypt was nationalized two years ago.

Senator KINLEY: Mr. Chairman, this company, I believe, is going to be a subsidiary of a large merchandising international company. Sears, Roebuck has been mentioned in the house as being the father of this company. Has the aspect of unfairness of this organization entering into that other business ever been considered? It will have the advantage of being able to get a lot of business without overhead. Has it ever been considered whether a large international company of that kind coming into Canada would not make for a little unfair competition for the insurance companies in Canada?

Mr. MACGREGOR: I apologize, Mr. Chairman and senators, for taking up so much time in discussing the life situation in Canada as a whole. I realize it is time I came to this particular company.

As I understand it, this company, if incorporated, would be backed largely by United States capital coming from the Sears, Roebuck organization. My understanding is that three quarters of the capital will be subscribed by the Allstate Insurance Company of the U.S.A., which is a fire and casualty insurance company wholly owned by the Sears, Roebuck organization.

Senator KINLEY: Would they be at arms-length for income tax purposes?

Mr. MACGREGOR: I beg your pardon, sir?

Senator KINLEY: Would they be at arms-length for income tax purposes from Sears, Roebuck?

The CHAIRMAN: Do you mean Sears, Roebuck of Canada or the United States?

Senator KINLEY: Either one. The control is in the United States.

Mr. MACGREGOR: Perhaps I might touch on that later.

The CHAIRMAN: They are two different companies.

Mr. MACGREGOR: Three-quarters of the stock would be subscribed for by the Allstate Insurance Company of the U.S.A. The other quarter would be subscribed by Simpsons-Sears which is a Canadian company, of course, and which I understand is owned fifty-fifty by Sears, Roebuck & Company and by Simpsons Limited. So that looking at Simpsons Limited as the Canadian element of this picture, I would say that the Canadian ownership will be about one eighth, the other seven-eighths being owned by Sears-Roebuck in one form or another.

Senator REID: It is almost an American company then?

Mr. MACGREGOR: It will be almost, but not entirely, owned by United States capital.

Senator CROLL: If we refuse the incorporation—I do not suggest that is even contemplated—these people can do business in Canada anyway. Why are they doing this?

Mr. MACGREGOR: May I go back a few years? The Allstate Insurance Company of the U.S.A., which is a fire and casualty insurance company wholly-owned by the Sears-Roebuck Company, was incorporated in the U.S.A. in 1931. It was registered in Canada, to do fire and casualty business, mainly automobile business, about 1948 or 1949. That company, the United States company, on a branch office basis, does a very large volume of fire and casualty business in Canada, mainly automobile insurance.

In 1960, the Sears-Roebuck organization sought and obtained incorporation of a Canadian fire and casualty insurance company, by the name of the Allstate Insurance Company of Canada, which company, although incorporated in 1960, was just organized during the current year and has not yet begun business. It is the intention of the Sears-Roebuck organization to transfer the existing portfolio of fire and casualty business in Canada, I believe around the beginning of this coming year, to the new Canadian company, and will thereafter operate in Canada in the fire and casualty field mainly through its Canadian fire and casualty subsidiary.

The parent, the Allstate Insurance Company of the U.S.A., will continue to be registered for re-insurance purposes and perhaps to help underwrite some of the larger risks.

Looking at the life field, the Sears-Roebuck organization obtained incorporation of the Allstate Life Insurance Company in the U.S.A. in 1957. That company was registered in Canada in 1960. It did not begin to do any business here until 1961, on a branch office basis. It still has not done much business in Canada and has only a dribble of life business in force in Canada at the present time.

It is now seeking incorporation of this Canadian life company, through which, as I understand it, it will write its life business in Canada.

The Allstate Life Insurance Company of the U.S.A., which is presently registered, will continue to be registered, but again only for re-insurance purposes.

To answer your question, sir, as to why they are taking this step, I may say that several British and foreign interests—more particularly insurance interests—in recent years have thought there might be some competitive advantage in operating through a Canadian subsidiary here. That explains, in many of the other cases, why Canadian fire and casualty companies were incorporated by British and foreign interests.

As I understand it, the real reason why the Sears-Roebuck organization desires to have two Canadian insurance companies—a fire and casualty company and this proposed life company—is to enable Simpsons Limited, the Canadian element of the Sears-Roebuck organization, to have a fixed and definite interest in the insurance operations of the Sears-Roebuck organization in Canada.

I have been told that that was an integral part of the understanding reached between the Sears-Roebuck Company and the Simpson company when they first courted one another a few years ago.

The Canadian fire and casualty company which was incorporated in 1960 was capitalized in exactly the same way as it is proposed to capitalize this company; so that, if this company is incorporated, Simpsons Limited, the Canadian element, will have a definite one-eighth interest in all of the insurance operations of the Sears-Roebuck organization in Canada.

Senator DROUIN: According to our laws, is it permissible for one company to own another one?

Mr. MACGREGOR: There is nothing in our law that restricts in any fashion a British or foreign insurance company owning a Canadian subsidiary. As regards Canadian insurance companies, our laws permit Canadian fire and

casualty insurance companies to form Canadian subsidiary companies or to purchase them; but our laws prohibit Canadian life insurance companies from investing in the shares of any other life companies, whether they be Canadian companies or British or foreign companies.

Briefly, Canadian life companies may not invest any of their funds—any of their life funds, in any event—in the shares of other life companies.

Senator DROUIN: In this particular case of the proposed Allstate Life Insurance Company, it would in fact be owned by the U.S. company?

Mr. MACGREGOR: It would be owned to the extent of three-quarters of its shares by the U.S.A. company, the Allstate Insurance Company of the U.S.A., which is wholly-owned by Sears-Roebuck.

Senator DROUIN: And you see no objections to that?

Mr. MACGREGOR: I cannot say that I do, sir.

Senator KINLEY: Have British companies any preference in the Canadian activities, over other foreign countries? Is there any British preference on insurance, in Canada?

Mr. MACGREGOR: No, Senator Kinley. I think it is fair and correct to say that we have done our best to treat all companies in Canada alike. While some segments of the industry, over the years, have made representations to the effect that they were in a disadvantageous position in some respect, I do not know of any rules applicable to the whole field that can be made any fairer than they are.

Senator KINLEY: The British, of course, have a big insurance business in Canada, fire and life.

Mr. MACGREGOR: Not so much life.

Senator KINLEY: Is that because of merit? I know they have a preference on marine insurance.

Mr. MACGREGOR: British companies do a very large volume of fire and casualty insurance in Canada, but relatively much less in the life field. There are no British life insurance companies in the United States.

Senator KINLEY: They have no preference in Canada?

Mr. MACGREGOR: Not in the insurance field. I would say that Canada seems to have been very attractive to British fire and casualty insurance companies and that many years ago British companies were reasonably active in the life field too—back at the time of Confederation. At that time, several British companies were doing life business in Canada. But most of them withdrew or discontinued new business when the act of 1877 was passed requiring full deposits. Many of them have been coming back into the field in more recent years and two or three or four British companies are now doing an increasing volume of life business in Canada; but in total the British companies only do 5 per cent of the new business in Canada.

Some questions have been raised, or at least have implied, that the method of operation of this company may give it or give the organization some competitive advantage. I think it is fair to say that perhaps its method of doing business does; but it is inherent in the Sears-Roebuck situation. In the fire and casualty field, where until recent years most of the business was done through the old traditional agency system, the Allstate Insurance Company began marketing automobile insurance through its existing stores and through representatives that worked exclusively for it, almost like salesmen, very similar to what obtains in the life field in Canada. As a consequence, its expenses have been lower and it has been able to offer automobile insurance, for example, at lower rates on the whole than have other companies. Since their expenses are lower, their rates are lower, which in turn enables them to

some degree to be more selective, if they wish, in accepting risks, because with lower rates business probably flows to them more readily.

The other fire and casualty companies do not, of course, like that system of so-called direct writing. The agents have not liked it. The agents in the fire and casualty field have for years, generations, felt that fire and casualty business is really theirs, since they can place it with whatever company they represent, and they may represent several companies.

Senator DAVIES: May I ask a question? It is only natural to assume that this new company to be formed will have a preference for the employees of Simpsons and Simpsons-Sears; but would it be possible for them to prevent their employees taking out life insurance in any other company?

Mr. MACGREGOR: Not that I know of, sir. The field of this company is not primarily amongst employees of Simpsons-Sears but amongst the public generally. So far as that point is concerned, the T. Eaton Life Insurance Company was incorporated 35 years or so ago primarily to insure the employees of Eatons and still confines its business largely to the Eaton organization; however, it does insure the public, too, and it has not given rise to any complaint of which I am aware.

Senator ISNOR: What about the investment of the employees' pension fund of this company; do they have any control over that?

Mr. MACGREGOR: I think the pension fund would be purely an internal matter for the Simpsons-Sears Company to decide.

Senator ISNOR: The responsibility would rest with Simpsons-Sears.

The CHAIRMAN: It would all depend. It may be managed under trustees or an insured plan, I do not know which, but it would have its own rules.

Mr. MACGREGOR: As I see it, one of the significant points is this: If an organization is or believes it is in a position to market insurance more efficiently, more economically, and therefore at lower cost to Canadians, should it be prevented from doing so? That has been the situation in the automobile insurance field, for example, with this organization. It has in a sense perhaps caused a small revolution in the fire and casualty field, but although it has increased competition greatly, I think it has had its beneficial results, too, in helping to cut down costs in the methods by which other companies were carrying on fire and casualty business. However, I would not expect this proposed life insurance company to have the same revolutionary effect on the life field in Canada as it has had in the automobile insurance field, notwithstanding that the Allstate Life Insurance Company of the United States has had a very rapid growth in the United States in the five years since it was incorporated. In the life field in Canada, an agent may only represent one life company, so there is in the life field now in Canada a very close and direct relationship between life agents and their companies, which is one of the essential ingredients of this method of doing business whereby the representatives of the Allstate insurance companies are the sole representatives of Allstate. So there is nothing new in the life field in Canada in that respect, as there was in the automobile insurance field.

Senator LAMBERT: May I ask you if the Allstate Life Insurance Company in the United States sell much of their stuff through the Sears-Roebuck organization?

Mr. MACGREGOR: I believe they sell it through the Sears-Roebuck stores, and the salesmen or representatives in those stores go out from the stores to sell to the public, and they also have representatives in many rural areas and many district offices. Right here in Ottawa one may have noticed an office, for example, in Ottawa South, on Bank street. There are representatives in these various offices, as well as in the Sears-Roebuck or Simpsons-Sears stores. I

understand, and I am subject to correction by the representatives of the companies, that about 30 regional offices are scattered throughout the States and Canada and over 200 district offices, quite apart from the stores.

Senator LAMBERT: Would you care to express an opinion whether the practice of selling by life insurance companies in the United States is not more what I might call progressive in that way, that is, people go to the counters of these institutions and ask for insurance, whereas the tendency in the past here, at any rate, has been to depend on the initiative of the insurance salesmen to do that work?

Mr. MACGREGOR: I think that is correct, Senator Lambert; but I would say that advertising is also one of the main influences, advertising in many ways, not only through the existence of booths, or whatever they may be called, in the stores, but in the press and radio and otherwise; but that of course is a part of the current trend, I think, in merchandising generally.

Senator LAMBERT: I think it should be said, too, that this bent of selling life insurance is not confined now in Canada to the efforts of the established agencies of the companies, but there are free and independent agencies who are doing that work in the way that Sears-Roebuck proposes to do it here, and in a good many centres in this country right now. I mean, I know a couple of companies that have a large proportion of their sales each year promoted and executed by an independent agency altogether.

Mr. MACGREGOR: Yes. I think the situation, briefly, is that many United States life insurance companies have over the years written life insurance business through general agents whereas most Canadian life insurance companies have written business through branch offices and their own agency force.

Senator LAMBERT: I think that has improved considerably even in the case of Canadian companies, with organizations.

Mr. MACGREGOR: If I might express a personal view, I cannot be enthusiastic about the incorporation of a lot of new insurance companies more particularly life insurance companies. My personal view is that the business can be transacted most efficiently and economically by a limited number of companies without a substantial further increase. At the same time I think it is a good thing in any industry to have some new blood injected and not to see any business conducted on a closed shop basis, so to speak, with no new ideas and no new companies coming into it.

Senator DAVIES: Can a company such as the Simpsons-Sears Company set up an insurance company to sell life insurance to their employees only without registering with you?

Mr. MACGREGOR: They would have to get incorporated somehow, either provincially or federally. Perhaps it might be of interest to the committee to have some idea of what the situation in the country to the south is like as respects new companies. I may say at the present time there are about 1,500 life companies in the United States so that on a proportionate population basis, taking Canada as having about one-tenth of the population of the United States, one might look here for about 150 life insurance companies. Actually we have 99 plus about 20 provincial companies which operate in a small way independent of our department. But when one looks at the number of new companies incorporated in the U.S.A. the picture is really staggering. In the ten-year period between 1951 and 1961 there were 1,230 new life companies incorporated in the U.S.A. In 1961 alone there were nearly a hundred, and in 1960 there were nearly a hundred. In 1955 there were about two hundred. So that on a proportionate population basis again, taking Canada as having one-tenth the population of the United States, one hundred incorporated in 1961

in the United States would mean about ten new companies here. Actually we have had only seven new Canadian companies in the last ten years.

Senator DROUIN: How many of these 99 companies incorporated federally in Canada are controlled by United States capital?

Mr. MACGREGOR: There are 36 Canadian life companies amongst the 99 from all countries; and of the 36, 12 are controlled outside Canada. But these 12 are not all controlled in the U.S.A. Some are controlled in Switzerland, England and Holland.

Senator MCKEEN: Having too many companies doing insurance business might run the cost up, yet at the same time you need some progressive action. You are not suggesting, are you, that we should cut the number down to one and have the national Government run the insurance companies?

Mr. MACGREGOR: No, sir, by no means.

The CHAIRMAN: That was not the kind of new blood he was talking about.

Mr. MACGREGOR: There is, of course, a further aspect that even if Parliament were to decide that we have enough insurance companies or perhaps too many, and were to adopt a policy that few or no more will be incorporated, no such rule or policy would stop foreign interests—or Canadian interests for that matter—from incorporating new insurance companies because they would simply go to a province and get incorporated there, probably on more lenient terms.

Senator DAVIES: Can such a company that is incorporated provincially do business outside of that particular province?

Mr. MACGREGOR: They may, sir.

Senator KINLEY: Mr. Chairman, has there been any objection to this bill?

The CHAIRMAN: No, and I may say that our Law Clerk advises us that this bill is in proper legal form and he has no suggestions to offer.

Senator ISNOR: Mr. Chairman, I would like to clear up a point on which Senator Kinley asked a question a little while ago. He asked if, in regard to income tax, the companies would be at arms length. Would Mr. MacGregor care to comment on that?

Mr. MACGREGOR: I am not sure that I am an expert on the arms length aspect but I can tell you how the company will pay income tax. If incorporated as a Canadian life company, it will pay income tax under the Income Tax Act, at the regular corporate rates on all profit transferred to the shareholders' account. Perhaps I might add that in this particular case it is the intention of the company if incorporated, to offer only non-participating life insurance, in other words, insurance issued on completely guaranteed terms, at fixed premiums with no dividends or anything of that kind. That is the way the Allstate Life Insurance Company operates in the United States. It is the way several other American life companies operate, including some of the so-called Hartford companies, for example.

Senator KINLEY: Does this company propose to have a premium that they pay every year or every so many years on the investment?

Mr. MACGREGOR: The All State Life Insurance Company of the U.S.A. offers what I would say are regular standard plans for individual policies. They have so far abstained from policies with frills. They issue group policies as well as individual but I would say they lean towards the simpler forms which are readily understood, at a fixed premium payable annually or semi-annually or quarterly as one wishes.

The CHAIRMAN: Honourable senators, we have with us this morning some representatives of the company. Is it the desire of the committee to ask questions of any of them?

Senator ISNOR: Perhaps they might care to make a statement.

The CHAIRMAN: Yes. Of the group present which one would care to make a statement? Mr. Tory or Mr. Graham?

Mr. JOHN W. GRAHAM: The only comment, Mr. Chairman, that I should like to make would be to underline a remark made by Mr. MacGregor, that the main purpose in seeking this incorporation is to enable Canadian participation in the Canadian life insurance operations of the Allstate organization. At the present time the Illinois corporation is registered and licensed in Canada, but there is no Canadian participation.

As has been indicated, part of the understanding between Simpsons Limited and Sears-Roebuck was that Simpsons Limited would have an interest in the Canadian insurance operations; and that is the sole purpose of seeking this incorporation. The result, as has been indicated, is that they would effectively have a 12½ per cent interest, which is in the amount that was agreed between the two principals, and that is the basis on which the casualty company is established.

Apart from that, Mr. Chairman and honourable senators, we would be prepared to answer any questions, but I do not think there is anything further I would care to comment upon at this moment.

Senator KINLEY: How about your directors?

Mr. GRAHAM: The directors will be the same as the directors of the Allstate Insurance Company of Canada. As to origin, three of them are representatives of Simpsons Limited, six are representatives, in essence, of Sears-Roebuck Allstate, the United States—there being nine in total. In fact, as is required by law and as is the desire, in any event, the majority of the directors are Canadian citizens resident in Canada, two of the Allstate representatives being their two senior men in Canada, both of whom are Canadian citizens.

Senator REID: May I ask if any legislation is required for the Simpsons-Sears stores that have been placed pretty well across Canada?

The CHAIRMAN: What do you mean by "registration," senator?

Senator REID: I am asking, for information, if they have to have a licence to do that, or can they join up and do business on the large scale they are doing it without legislation?

Mr. GRAHAM: Life insurance may only be sold through an agent who is licensed under the laws of the province. Wherever a sales office or agency is established it would be manned by personnel licensed by the provincial Superintendent of Insurance. There would be no licence issued to Simpsons Limited or to any store; it would be the individuals who were representing the insurance company who might physically be located there but would, as individuals, be licensed.

Senator ISNOR: Because of the present value of the Canadian dollar will that affect the American rates as charged by the home company and the new Canadian company?

Mr. GRAHAM: Senator, if I understand your question, the intention is that the policies to be written in future would be issued by a Canadian company in Canadian dollars, subject to Canadian investment and deposit requirements. I do not see how it is affected in any way by the exchange situation. The policies written presently by the American life company in Canada are also written in Canadian dollars, but there are Canadian dollar deposits with the Department of Finance, and it is with respect to this Canadian business that we are subject to the supervision of Mr. MacGregor.

Senator ISNOR: Would it be a fair comparison to say that the American rates at the present time would be 7½, 8 or 9 per cent lower than in Canada?

Mr. GRAHAM: I do not feel I am competent to answer that, because the investment yields in Canada are higher, which reduces your premium cost. As a broad generalization, the cost of life insurance is cheaper in Canada than it is in the United States.

Senator KINLEY: Is that generally true?

The CHAIRMAN: Yes.

Mr. GRAHAM: Yes, senator,

The CHAIRMAN: Any other questions? I am ready for the motion. Shall I report the bill without amendment?

Hon. SENATORS: Agreed.

The Committee thereupon adjourned.



First Session—Twenty-fifth Parliament
1962

THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING COMMITTEE

ON

BANKING AND COMMERCE

To whom was referred the Bill C-78, intituled:

“An Act to amend the Income Tax Act”

The Honourable SALTER A. HAYDEN, Chairman

THURSDAY, NOVEMBER 22, 1962

WITNESSES:

Mr. F. R. Irwin, Director, Taxation Division, Department of Finance and
Mr. J. F. Harmer, Assistant Director, Assessment Branch, Department
of National Revenue.

REPORT OF THE COMMITTEE

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1962

THE STANDING COMMITTEE ON
BANKING AND COMMERCE

The Honourable Salter Adrian Hayden, *Chairman*

The Honourable Senators

Aseltine	Gouin	Paterson
Baird	Hayden	Pearson
Beaubien (<i>Bedford</i>)	Higgins	Pouliot
Beaubien (<i>Provencher</i>)	Horner	Power
Bouffard	Howard	Pratt
*Brooks	Hugessen	Reid
Burchill	Irvine	Robertson
Campbell	Isnor	Roebuck
Choquette	Kinley	Smith (<i>Kamloops</i>)
Connolly (<i>Ottawa West</i>)	Lambert	Taylor (<i>Norfolk</i>)
Crerar	Leonard	Thorvaldson
Croll	*Macdonald (<i>Brantford</i>)	Turgeon
Davies	McCutcheon	Vaillancourt
Dessureault	McKeen	Vien
Drouin	McLean	Willis
Emerson	Molson	Woodrow—50.
Farris	Monette	
Gershaw	O'Leary (<i>Carleton</i>)	

(Quorum 9)

*Ex officio member.

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Tuesday, November 20th, 1962.

"A Message was brought from the House of Commons by their Clerk with a Bill C-78, intituled: "An Act to amend the Income Tax Act", to which they desire the concurrence of the Senate.

The Bill was read the first time.

With leave of the Senate,

The Honourable Senator McCutcheon, P.C., moved, seconded by the Honourable Senator Choquette, that the Bill be read the second time now.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator McCutcheon, P.C., moved, seconded by the Honourable Senator Choquette, that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative."

J. F. MacNEILL,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

THURSDAY, November 22, 1962.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 10.15 a.m.

Present: The Honourable Senators Hayden, *Chairman*; Aseltine, Beaubien (*Provencier*), Brooks, Croll, Dessureault, Drouin, Farris, Horner, Hugessen, Irvine, Isnor, Kinley, Lambert, Leonard, McCutcheon, McKeen, McLean, Pearson, Pouliot, Power, Reid, Roebuck, Smith (*Kamloops*), Taylor (*Norfolk*), Thorvaldson, Turgeon, Vaillancourt, Willis and Woodrow.—30.

In attendance: Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel and the Official Reporters of the Senate.

Bill C-78, an Act to amend the Income Tax Act, was read and considered clause by clause.

Mr. F. R. Irwin, Director, Taxation Division, Department of Finance and Mr. J. F. Harmer, Assistant Director, Assessment Branch, Department of National Revenue were heard in explanation of the Bill.

On Motion of the Honourable Senator Croll, it was Resolved to report recommending that authority be granted for the printing of 800 copies in English and 200 copies in French of their proceedings on the said Bill.

After discussion, it was Resolved to report the Bill without any amendment.

At 11.50 a.m. the Committee proceeded to the consideration of another Bill.

Attest.

Gerard Lemire,
Clerk of the Committee.

REPORT OF THE COMMITTEE

THURSDAY, November 22, 1962.

The Standing Committee on Banking and Commerce to whom was referred the Bill C-78, intituled: "An Act to amend the Income Tax Act", have in obedience to the order of reference of November 20, 1962, examined the said Bill and now report the same without any amendment.

All which is respectfully submitted.

SALTER A. HAYDEN,
Chairman.

THE SENATE
STANDING COMMITTEE ON BANKING AND COMMERCE
EVIDENCE

OTTAWA, Thursday, November 22, 1962.

The Standing Committee on Banking and Commerce, to which was referred Bill C-78, to amend the Income Tax Act, met this day at 10 a.m.

Senator Salter A. Hayden (*Chairman*), in the Chair.

On a motion duly moved and seconded it was agreed that a verbatim report be made of the committee's proceedings on the bill.

On a motion duly moved and seconded it was agreed that 800 copies in English and 200 copies in French of the committee's proceedings on the bill be printed.

The CHAIRMAN: Honourable senators, we have present today representatives of the two departments concerned in the presence of Mr. Irwin of the Department of Finance and Mr. Harmer of the Department of National Revenue.

Before we start there are two things I want to mention. One is that I am still optimistic enough to think that we might finish with the bill to amend the Income Tax Act this morning and also the bill to amend the Estate Tax Act. It is my fault that we might sit until 20 minutes to 1 o'clock. The second is that for the purpose of dealing as expeditiously as possible with Bill C-78 we might deal with the sections that come along as a matter of routine first, and save the three big ones with the multitude of words until the end of our consideration. Is that the pleasure of the committee?

Hon. SENATORS: Agreed.

The CHAIRMAN: Then, Mr. Irwin, I gather this is going to be a team effort as between you and Mr. Harmer?

Mr. F. R. IRWIN, Taxation Director, Department of Finance: Yes, Mr. Chairman.

The CHAIRMAN: My suggestion is that we might start with section 1. Would you give the committee a very short explanation of what is involved in section 1?

Mr. IRWIN: Yes, Mr. Chairman. Clause 1 is consequential upon an amendment which we come to later in the bill. Clause 1 amends section 6 which contains a number of items which must be included in income. It makes reference to certain proceeds of disposition which must be taken into income, and which are described in much greater detail in clause 19.

The CHAIRMAN: So, we do not need anything further on clause 1. It is consequential upon another clause, namely, clause 19, the oil and gas provision?

Mr. IRWIN: That is right.

The CHAIRMAN: Does clause 1 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: We go next to clause 3.

Mr. IRWIN: Clause 3, Mr. Chairman, deals with holding companies. Section 12(1)(c) of the Income Tax Act now says that expenses incurred in earning exempt income are not deductible. Subsection (6) which is being amended here was added to the law some years ago to say that the provision of section 12(1)(c) shall not apply where a company meets certain requirements. The requirements are set out in subsection (6) which we have before us. All this amendment does is to add the underlined words, and it broadens the conditions under which a company can qualify for this exemption.

The CHAIRMAN: Since we are dealing with exemptions not allowed by this section would you not rather say that it narrows the application of the no-deduction rule?

Mr. IRWIN: It could be described in that way.

Senator CROLL: Does it narrow or broaden it?

The CHAIRMAN: It narrows the no-deduction rule and therefore it broadens your qualification to use it as an expense.

Mr. IRWIN: It can be described in another way, that is, it makes it easier for a holding company to qualify for the right to deduct certain expenses.

The CHAIRMAN: It is relieving. Does clause 3 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: On clause 4—

Mr. IRWIN: Clause 4 provides for increasing the deduction for dependents by \$50.

Senator PEARSON: In both cases?

Mr. IRWIN: Yes, both the deduction for children qualified for family allowance and dependents not qualified for family allowance.

The CHAIRMAN: Does clause 4 carry?

Hon. SENATORS: Carried.

Mr. IRWIN: Clause 5 provides that parents whose children are eligible for family assistance payments may claim only the deduction of \$300 which is the deduction for family allowance children and not the deduction of \$550 which would be the deduction for children not qualified for family allowance. It is intended to put parents of children who receive family assistance payments in the same position for tax purposes as parents of children in respect of whom family allowance may be paid.

Senator LEONARD: Is this the same principle as that which has been applied hitherto?

Mr. IRWIN: This has been in our annual bill for the last four or five years.

The CHAIRMAN: Does clause 5 carry?

Hon. SENATORS: Carried.

Mr. IRWIN: Clause 6 is intended to remove the conflict which now exists between section 31A and section 29 of the act. Section 31A was added a year or two ago to provide that certain payments made in respect of employment in Canada, such as withdrawals or return of contributions under a pension fund, when paid to a former employee in Canada who has become a non-resident, shall nevertheless be taxable in Canada. Section 29 says that a person who has been resident in Canada for part of the year and for part of the year is non-resident in Canada shall be taxable only on the income he receives while in Canada; so it was necessary to amend section 29 to ensure that the payment that was intended to be taxed under Section 31A would in fact be taxed.

The CHAIRMAN: A standard form of income tax was prescribed for the provinces putting income tax into force. Did the question arise as to how you could get income in those circumstances where the payment had fallen due

after the man had become a non-resident. In other words, if he moved from Ontario, from Windsor to Detroit? I knew there were some problems in connection with that, that were difficult to deal with under the provincial Income Tax Act.

Mr. IRWIN: The particular problem that was dealt with in clause 6 did not arise because of federal-provincial relations. However, in clause 7 we made some changes which have arisen because of the sort of thing you mention.

The CHAIRMAN: I was just a section too early. Is that the substance of what clause 6 does? I see that subparagraph (2) is consequential.

Mr. IRWIN: It is consequential upon the change in subclause (1).

Senator BROOKS: Would this be a reciprocal arrangement with the other country, where he was working—that is, he pays income tax here in Canada for the time he works here and if he works in the United States, would it be a reciprocal arrangement so far as their tax is concerned?

Mr. IRWIN: There is an arrangement both in our own law and in United States law, and also in our tax convention with the United States, that one country will give a credit for taxes imposed by the other.

Senator McKEEN: Where there is a capital gains tax imposed, do you get any credit? We have no capital gains tax here. If a man has to make a return in the United States and if he has to pay any additional tax in that way, will he get any credit?

Mr. IRWIN: If an individual becomes liable for capital gains tax in the United States, I am quite sure he would have to pay that tax.

The CHAIRMAN: Yes, even if he made the capital gain in Canada, if he is accounting for income in the United States he must account under that law.

Senator McKEEN: It gives him credit for the amount paid in Canada on his capital gain in the United States.

The CHAIRMAN: Yes.

Shall clause 6 carry?

Hon. SENATORS: Carried.

Mr. IRWIN: Clause 7 amends the section of the act which provides that the federal tax shall be abated by 16 per cent in 1962, 17 per cent in 1963 and so on up to 20 per cent in 1966. In connection with that federal-provincial fiscal arrangement, it has been necessary to define the expression "his income for the taxation year". All that clause 7 does is define that expression in two cases. One is the case of an individual to whom section 29 applies, who is a person who is resident in Canada part of the year and for some other part of the year is non-resident. The other case is the individual to whom section 31 applies who was not resident in Canada any time in the year but who is taxable in Canada on certain payments.

The CHAIRMAN: He might have earned income in Canada from a business or from employment and not be a resident of Canada?

Mr. IRWIN: Yes.

Subclause (2) does not make any change in substance, except to add a reference to the new section 41A. It does change the wording and, we hope, clarifies it.

The CHAIRMAN: 41A is the section which deals with production?

Mr. IRWIN: The logging tax.

The CHAIRMAN: That would be necessary because the application of the tax has changed. Under this bill it is a deduction from tax and under the law it was an expense.

Mr. IRWIN: Formerly it was an expense and now it becomes a credit for tax purposes.

The CHAIRMAN: Shall clause 7 carry?

Hon. SENATORS: Carried.

Mr. IRWIN: Subclause (1) of clause 8 is consequential, in that it refers to the amendment to be considered in subclause (2) of clause 8. Perhaps I should say it is a little more than consequential. It provides that this definition of related persons shall apply to all of section 39. Since we are, in the subclause 2, adding a new subsection which uses the expression "related persons", it is necessary to have the expression "related persons" apply to the whole section and not just a portion of it as formerly. Subclause (2) deals with the definition of associated companies. You will recall that in 1960 and 1961 the act was amended to provide new rules under which the splitting up of companies into smaller companies in order to obtain the benefit of the lower rate of tax on the first \$35,000 would be prevented. It has since been found that these rules might preclude certain companies from qualifying merely because one was a trust company which controlled two or more companies under a trust. Last year's amendment provided that the two or more companies controlled by a trust company would not be associated; but it did not go quite far enough, and this year's amendment is intended to make clear that the trust company and the companies it controls shall not be deemed to be associated, unless of course they were set up in the way described in the new subsection (6b).

Senator HUGESSEN: In the case of a company which owns another which is incorporated for one person, and also owner of a company incorporated for another, but they are completely unrelated, the amendment seeks to correct that, is that the idea?

Mr. IRWIN: I am not sure that I understand you, senator. Last year's amendments made clear that the companies controlled by a trust company would not be deemed to be associated, and this year's amendment is intended to provide that the trust company and the companies which the trust company controls by reason of a trust are not associated.

The CHAIRMAN: What you are thinking of, Senator Hugessen, is if you have a trust company holding shares of two different companies and there is the same majority shareholder in each company?

Senator HUGESSEN: I thought the amendment was intended to correct where one trust company, for instance, is the owner of a company which is incorporated for some individual, and is also the owner of a company which is incorporated for another individual, but completely unrelated. Wasn't the idea of the amendment to make sure that they would not be considered to be associated companies, with the basic ownership related?

Mr. IRWIN: That is right.

Senator HUGESSEN: Then what is this amendment?

Mr. IRWIN: Well, this takes care of the possibility of the trust company and those companies controlled by the trust company being deemed to be associated.

Senator HUGESSEN: Oh, I see.

Senator ISNOR: Why do you take it back to be applicable to 1961?

Mr. IRWIN: The year 1961, I believe, was the time from which this previous amendment, to which I referred, applied. It was thought that it would be neater if this amendment also dated from that time, because they both refer to much the same situation.

The CHAIRMAN: This is what was intended when they made the enactment in 1961, but the language was not broad enough; so now they are broadening it to make it clear, and taking it back to when the amendment was introduced, and that amendment was made applicable in 1961.

Senator PEARSON: It does not make any difference to the actual taxing of the corporation or individual?

Mr. IRWIN: This is relieving.

The CHAIRMAN: Yes, this is relieving, so it may remove a difficulty.

Senator CROLL: What was likely done was that the department had given the view that the trust company was not associated, and then found that the language perhaps was not clear, and that is the intention, but it does not really make any difference. Is that it?

Mr. HARMER: That is right, senator. I gave the committee the assurance that this would be the way it was to be interpreted, but this makes it legal.

The CHAIRMAN: Shall the section carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Now section 9.

Mr. IRWIN: Section 9 provides for the continuation of an arrangement which has been in existence since 1960. This recognizes that in the province of Quebec university grants are not granted to universities by the federal Government. Instead, the province of Quebec imposes additional tax and pays these grants itself. Now, under this arrangement the federal Government undertakes to abate a corporation's income tax in that province by an extra percentage point.

The CHAIRMAN: So it is 10 per cent in relation to corporation taxable income earned in Quebec, and it is 9 per cent in the other provinces?

Mr. IRWIN: That is correct.

The CHAIRMAN: Now the second part of that.

Mr. IRWIN: The second part is merely the coming into force provision to pick up where the previous provision left off.

The CHAIRMAN: Shall section 9 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Section 12. We shall skip sections 10 and 11 for the moment, that is, dealing with production incentive, and come to those later.

Mr. IRWIN: Section 12 changes the method of treating provincial taxes on income from logging operations. Formerly provincial taxes on income from logging operations were allowed as a deduction in computing income. This amendment provides that such taxes shall be a credit against federal tax, but the maximum is a credit equal to two-thirds of a tax at 10 per cent.

Senator CROLL: I do not understand what you are doing.

The CHAIRMAN: Instead of being an expense it becomes a deduction directly from tax.

Senator CROLL: I do not understand it. Please give me the background.

Mr. IRWIN: I believe the background of this, sir, is that representations were made that the logging industry was subjected to very heavy taxes and to taxes that were not borne by other industries. They paid ordinary federal income tax, they paid provincial tax, and in addition they paid this provincial logging tax. The federal Government has gone, let us say, two-thirds of the way to remove this additional impost.

Senator BROOKS: Does this apply to all provinces?

Mr. IRWIN: It applies to all provinces, but at the present time only the provinces of Ontario and British Columbia impose a logging tax.

The CHAIRMAN: Shall section 12 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Section 13.

Mr. IRWIN: Section 13 merely adds the underlined references to the new sections 40A, which is the production incentive, and 41A, which is the credit for provincial logging taxes.

The section being amended is the one which provides a special formula for calculating tax on recaptured depreciation and since the new section 40A provides a deduction from tax and the new section 41A provides for a credit against tax it is necessary to include these adjustments with all other adjustments for tax purposes in this special formula.

The CHAIRMAN: Shall the section carry?

Hon. SENATORS: Carried.

Senator DROUIN: Mr. Chairman, section 41A is the section which we stood, dealing with production incentives?

The CHAIRMAN: That is right.

Now we come to section 14.

Mr. IRWIN: Section 14 merely provides that the minister's demand for a return may be served personally.

The CHAIRMAN: Shall the section carry?

Hon. SENATORS: Carried.

The CHAIRMAN: We come now to section 17.

Mr. IRWIN: Mr. Chairman, section 17 deals with registered retirement savings plans and it provides that funds may be transferred from one registered retirement savings plan into another registered retirement savings plan or into a registered pension plan without tax liability arising on the funds transferred.

Senator ASELTINE: This is a relieving measure, is it not?

The CHAIRMAN: This is part of the portable pension scheme, is it not?

Mr. IRWIN: This measure increases the portability of the funds set aside to provide retirement income.

Senator WOODROW: Does this do anything to increase the price of a pension plan?

Mr. IRWIN: Registered retirement savings plans are individual plans. Each person has a plan of his own.

Senator WOODROW: But does this new legislation result in more cost to the individual for his plan?

Mr. IRWIN: No, sir, as it stands at present there is a tax penalty if an individual wishes to take his money out of a registered retirement savings plan. This will permit him to move from one plan to another or to take it out of a plan and put it into a pension plan.

Senator WOODROW: Without tax liability?

Mr. IRWIN: Yes.

Senator ISNOR: Are you satisfied that this is workable?

Mr. IRWIN: Yes, sir.

The CHAIRMAN: It is going to create more problems, as I see it. The funds themselves are going to have to be pretty liquid or have a certain portion that will be pretty liquid to provide for these transfers.

Senator MCKEEN: Can that money be used to buy an annuity? Can a man contributing to a pension plan draw the money out of the fund and put it into a Government annuity and still be exempt from paying a tax on the funds?

Mr. IRWIN: The kind of transfer you are referring to, of course, is from a pension plan to an annuity. That is not actually covered here although it is permitted under existing legislation. The annuity to which you refer would have

to qualify as a registered retirement savings plan. There is no provision under which one can withdraw his contributions from a pension plan. In fact, the rules of the pension plan probably would not permit it. In any case the law does not permit transfers free of tax from a pension plan into what you might call ordinary annuities.

Senator McKEEN: Government annuities?

Mr. IRWIN: Well, a Government annuity may qualify as a registered retirement savings plan but it so qualifies only if the person purchasing it asks that it be registered. It is also possible to buy a Government annuity which will not be a registered retirement savings plan.

Senator ISNOR: Is it not a "must" that you must register it before you can deduct the premium from taxable income?

Mr. IRWIN: It must be a registered retirement savings plan before your premiums or contributions are deductible.

The CHAIRMAN: Shall the section carry?

Hon. SENATORS: Carried.

The CHAIRMAN: What have you to say on section 18, Mr. Irwin?

Mr. IRWIN: Clause 18 is of interest to profit-sharing plans. The law contains a reference to two kinds of profit-sharing plans, one is called an employees profit-sharing plan and one is called a deferred profit-sharing plan. The main difference between these two kinds of plans is that allocations under an employees profit-sharing plan must be included in income whether the member gets the cash in his hand or not. Under a deferred profit-sharing plan the yearly allocations are not taxed each year but are taxed only when received by the member. Now it may happen that the members of an employees profit-sharing plan would want to have that plan converted into a deferred profit-sharing plan so arrangements have to be made to provide that the amounts which an employee could receive tax-free under an employees profit-sharing plan may be received tax-free eventually under a deferred profit-sharing plan, and one such item is the excess of capital gains over capital losses made by the trustee of the employees profit-sharing plan. This amendment provides for a determination of that amount at the time the employees profit-sharing plan is being converted into a deferred profit-sharing plan. This is so that it may be established at that time and may eventually be received tax-free by the member of the deferred profit-sharing plan.

Senator CROLL: I see what you are doing but that involves a ministerial decision?

Mr. IRWIN: Yes, Senator Croll.

Senator CROLL: In each case there could be a considerable amount involved or a considerable number of people involved and quite properly I realize you are dealing with figures and matters of judgment. Suppose I did not like the ministerial decision? On that particular aspect of it, what can I do?

Mr. IRWIN: This is not obligatory upon the profit-sharing plan as I understand it. This is only done upon the request of the employee's profit-sharing plan. You see if they do not have this provision the only way the employees profit-sharing plan could establish a taxable gain would be to sell all its assets and buy them back and this may be a difficult operation. So the people who are interested in profit-sharing plans have asked that provision be made for the minister to establish this amount of capital gains at the time when the transfer to the new kind of plan is being made.

The CHAIRMAN: Without actually making a realization.

Mr. IRWIN: Without going through the mechanics of selling and buying.

Senator KINLEY: This profit-sharing plan for employees is, of course, a plan in which the employer provides the money for the profit-sharing of the employees.

The CHAIRMAN: The company does.

Senator KINLEY: I mean, the company supplies it.

Mr. IRWIN: That is the central feature of a profit-sharing plan, of course, that the employer shares part of his profits with his employees, either in cash or he sets the moneys aside for distribution later. Under some plans employees may also put money into the plan, but those are savings funds, and there is no deduction.

Senator KINLEY: That is for a certain purpose, for retirement or something like that.

The CHAIRMAN: Usually in the case of an employees' savings plan there is a distribution of that over a certain number of years.

Mr. IRWIN: There is a wide variation in these plans, Mr. Chairman; some do follow that plan. In others the employee puts in some savings and they may be held until his retirement.

Senator KINLEY: How is this plan controlled? It is set up and jointly controlled by the company and the men—who have a committee, I suppose?

Mr. IRWIN: This would be a matter for the employer and his employees to work out themselves.

Senator KINLEY: Is this controlled by statute?

Mr. IRWIN: No.

The CHAIRMAN: By agreement.

Senator ISNOR: Does this profit-sharing concern the co-operatives in the same way as the ordinary businessman?

Mr. IRWIN: I do not see why it would not. I do not see anything that would prevent a co-operative from having a profit-sharing plan for its employees.

Senator ISNOR: They allow their earnings to accumulate—

Senator McCUTCHEON: If they have any profits!

Senator ISNOR: Yes, they have.

Mr. IRWIN: A co-operative is not a profit-sharing plan in the sense described in the law.

Senator KINLEY: They declare profit dividends.

The CHAIRMAN: But we are talking about two different things. The profit-sharing plan Mr. Irwin is talking about is one for the benefit of employees. What Senator Isnor has been talking about is the profit-sharing scheme by which the co-operative distributes monies to those who are members of the co-operative, and they are not necessarily employees. Therefore, the two things are entirely different.

Senator KINLEY: Different to that extent, but what is the benefit in income tax, in having such a plan for their employees? Do they declare their income, for taxation purposes, on that profit-sharing?

Mr. IRWIN: The provisions made in the Income Tax Act for employees profit-sharing plans is to provide that the income on the money that is held in trust shall not be subject to income tax. If the moneys that were allocated under an employees profit-sharing plan were distributed every year I suppose it might not be necessary to have any provision in the Income Tax Act to cover it, because it would be something—

Senator KINLEY: —added to their income?

Mr. IRWIN: Yes, added to their income.

Senator KINLEY: Suppose that a company puts \$5,000 into its profit-sharing plan a year, could they put that in as an item of expense?

Mr. IRWIN: This is something which, perhaps, I should have mentioned, that the Income Tax Act also provides that the employer contributions to an employees' profit-sharing plan shall be deductible.

Senator KINLEY: Oh, I see.

Senator McCUTCHEON: Just as a contribution to a pension plan is.

The CHAIRMAN: That is right. Carried?

Hon. SENATORS: Carried.

The CHAIRMAN: Section 20, which starts on page 30.

Mr. IRWIN: This section is also consequential. It merely adds a reference to the underlined clause 40A, which is the production incentive amendment; and to section 41A, which is the credit for provincial logging taxes.

The CHAIRMAN: The general section deals with sales of inventory.

Mr. IRWIN: Yes. Again, there is a formula provided in this section for determining tax.

Senator POULIOT: Mr. Chairman, could I ask Mr. Irwin if he drafted this?

Mr. IRWIN: Sir?

Senator POULIOT: Did you draft section 19 yourself?

The CHAIRMAN: We are not at section 19 yet.

Senator POULIOT: No, but we are on section 20.

The CHAIRMAN: We decided in the beginning that there were certain sections we would deal with first, and that we would take the big ones after we got the small ones out of the way.

Senator POULIOT: Now we are on section 20.

The CHAIRMAN: Yes.

Senator POULIOT: I would like to know from Mr. Irwin if he drafted section 20.

Mr. IRWIN: No, I did not, personally.

Senator POULIOT: Who drafted it?

Mr. IRWIN: The bill was drafted by the Department of Justice, but, of course, the Minister of Finance takes full responsibility for the bill when it is introduced in the house.

Senator POULIOT: I know all that, but that is not an answer to my question. My question was clear and to the point. I wanted to know if you had drafted it, and you said, "No".

Mr. IRWIN: That is correct.

Senator POULIOT: Now I ask another question: Who drafted it?

Senator McCUTCHEON: He would not know. It was drafted in the Department of Justice.

Senator POULIOT: But "the Department of Justice" is a gentleman who is in the income tax branch and who represents the Department of Justice, and he is the one who has the inspiration to draft long clauses and sections, and I would like to have him here in order to know how his mind works. It would be very important, and I am sorry his head is not made of glass so I could see how his brains are working. This is the question I wanted to ask him; and I wanted to see him here. I do not want to be hard on Mr. Irwin, he is a nice fellow, but I would like to know how the mind of the other fellow works, in order to know how he drafts such clauses, clauses that are just as long as a worm that would start from the earth and climb to the sky.

The CHAIRMAN: Section 20 is not very long, senator.

Senator POULIOT: No, but it is an exception. I think of section 19, and we have passed over it in a great jump.

The CHAIRMAN: We have not passed it yet.

Senator POULIOT: No, but you have passed over it.

The CHAIRMAN: Yes, and I want to tell you it was a long hurdle.

Senator POULIOT: I do not know yet who has drafted it.

The CHAIRMAN: Section 20—carried?

Some Hon. SENATORS: Carried.

The CHAIRMAN: Section 22.

Mr. IRWIN: Section 22(1) deals with the non-resident withholding tax on interest. In December, 1960 the non-resident withholding tax on interest going to non-residents was amended to withdraw the exemption which formerly existed on interest payable in a foreign currency.

Mr. IRWIN: However, at that time certain exceptions were provided. One such exception was for obligations entered into before December 20, 1960. It was also provided that where, upon the purchase of property, new obligations were issued after December 20, 1960, which replaced obligations issued before December 20, 1960, the interest on such obligations would also be exempt. However, the wording of that exemption left a little bit to be desired. For one thing there was a clear mistake in the very last word, and it was also represented that some of the other wording was not clear. Now this amendment is merely intended to clarify that exemption, and particularly to make it clear that it is not necessary for these obligations to be the entire consideration for the property that is acquired.

The CHAIRMAN: Now, then, the second part of section 22?

Mr. IRWIN: The second part of section 22 merely makes it clear that payments for the use in Canada of videotapes, shall bear the 10 per cent non-resident withholding tax in the same way as payments for the use of other films for television.

The CHAIRMAN: I notice you make the coming in force date December 20, 1960. That is what was intended when you brought it in in 1960?

Mr. IRWIN: That's right.

The CHAIRMAN: Carried?

Some hon. SENATORS: Carried.

The CHAIRMAN: Section 23.

Mr. IRWIN: Section 23 adds companies whose principal business is mining iron ore in Canada to the list of companies which are exempt from the additional 15 per cent tax imposed on profits earned in Canada by non-resident companies carrying on business in Canada.

The CHAIRMAN: Carried?

Some hon. SENATORS: Carried.

The CHAIRMAN: Section 24.

The WITNESS: Section 24 provides that under certain conditions the Minister of National Revenue must assess a non-resident for non-resident withholding tax and this will permit a non-resident to appeal under the ordinary appeal processes of law.

The CHAIRMAN: Carried?

Some hon. SENATORS: Carried.

The CHAIRMAN: Section 25.

Mr. IRWIN: Section 25 arises because of a new arrangement with the provinces under which the federal Government agrees to collect the income

taxes imposed by the provinces, and it has entered into collection agreements for this purpose. This particular amendment will authorize the Minister to allocate the tax collected.

The CHAIRMAN: You mean on his own responsibility and without appeal, or is this a matter of agreement between the province and the federal Government?

Mr. IRWIN: This is a matter of agreement between the federal Government and the provinces.

Senator DROUIN: This matter was submitted to the provinces?

Mr. IRWIN: I understand the provinces have similar provisions in their law.

The CHAIRMAN: Carried?

Some hon. SENATORS: Carried.

The CHAIRMAN: Section 26.

Mr. IRWIN: Section 26 is also consequential upon the new federal-provincial fiscal arrangements. This will permit the Minister of National Revenue, under prescribed conditions, to communicate information to the provinces. Obviously the provinces have an interest in certain information because the federal Government is collecting their taxes for them.

The CHAIRMAN: They would like to audit the collection possibly.

Senator CROLL: It is a little more than that as I see it. It is a further extension of passing out information we have always been careful about.

The CHAIRMAN: It is for the purpose of the provinces imposing taxes similar to those. The federal authority is an agent for the province in collecting the tax.

Senator DROUIN: They have a mandate?

The CHAIRMAN: Carried?

Some hon. SENATORS: Carried.

The CHAIRMAN: Section 27.

Mr. IRWIN: Section 27 deals with administrative matters. The first part provides that a sworn statement to the effect that a notice was served personally shall be taken as *prima facie* evidence of such service and the second part provides that the production of documents shall be taken as *prima facie* evidence that the documents were filed.

The CHAIRMAN: Carried?

Some hon. SENATORS: Carried.

The CHAIRMAN: Section 28.

Mr. IRWIN: Section 28 merely provides that corporations deemed to be associated for the purpose of section 39 shall be deemed to be associated for all purposes of the Act. This is necessary because the concept of associated corporations is now used in the new section providing the production incentive, and in the new section dealing with 150 per cent deduction for increased expenditures on scientific research.

The CHAIRMAN: Carried?

Some hon. SENATORS: Carried.

The CHAIRMAN: Now we get back to the ones we passed over—back to section 2. This is the one dealing with scientific research. There is also another section which deals with that too, isn't there?

Mr. IRWIN: The first part of section 2 is merely consequential; it is a reference to the deduction, the new deduction to be permitted by the new section 72A, which will be added by clause 16.

The CHAIRMAN: At the same time we could consider section 2 and section 16. You will find section 16 starting on page 15. That is dealing with scientific research.

Mr. IRWIN: The second part of clause 2 is also consequential.

Mr. IRWIN: The second part of clause 2 is also consequential upon the new credit for provincial logging tax. The particular paragraph being amended now provides that there shall be a deduction for provincial logging tax and provincial mining tax. Since the deduction for provincial logging tax is being replaced by a credit those words are taken out of this paragraph.

The CHAIRMAN: Shall clause 2 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Would you deal now with clause 16 which is the provision for the extra 50 per cent making a total of 150 per cent deduction for scientific research?

Mr. IRWIN: Sections 16 and 15 together provide the amendments to carry out the proposal that additional expenditures on scientific research be deducted at the rate of 150 per cent. You will note that the procedure followed in the bill is that of saying that the existing section 72 dealing with scientific research remains in the law to provide a 100 per cent deduction for expenditures, and a new section 72A has been added to provide for the additional 50 per cent deduction for increased research expenditures. The plan is that increased research expenditures shall be measured by reference to expenditures in a base period, or base year. The base year is the last taxation year of the corporation ending before April 11, 1962.

The CHAIRMAN: Mr. Irwin, on that basis it means if I spend \$100,000 in 1961 on scientific research I would have been entitled to a 100 per cent deduction; is not that right?

Mr. IRWIN: Yes.

The CHAIRMAN: If in the next year I spend \$150,000, in relation to the \$100,000 it is the same as in the base period and I would get only the 100 per cent, and in relation to the other \$50,000 I would get 150 per cent. Is that broadly it?

Mr. IRWIN: Yes. From the way the law is set up you get 100 per cent in relation to everything, and an additional 50 per cent in relation to the extra \$50,000.

Senator BROOKS: Would not the date of April 11 have something to do with that?

The CHAIRMAN: That is the commencement point.

Senator BROOKS: It would not be the year 1961-62, but 1961 up to April 11, 1962, and from April 11, 1962 on.

Mr. IRWIN: In the Chairman's example I am assuming it is the second year where he has spent the \$150,000, and that would be the taxation year ending in 1962 after April 10.

The CHAIRMAN: That is right.

Senator BROOKS: Yes.

Senator LEONARD: Mr. Chairman, may I ask: Are the capital expenditures and the current expenditures on research lumped together to determine this base figure for your base year? In other words, a company might build a research centre in the base year putting out a very substantial capital amount which would not be duplicated for another 10 or 15 years, but its current expenditures will increase. Does the base used include both capital and current expenditures?

Mr. IRWIN: Yes, sir, both the base and the increased expenditures in respect of which the 150 per cent deduction is made includes both current and capital expenditures.

Senator LEONARD: That rather penalizes the company that has made a heavy capital expenditure in the base year. I rather assumed from the resolution when the minister introduced it that there would be two separate calculations; one with respect to capital expenditures, and the other with respect to current expenditures. There is no encouragement to a company which has had a very substantial capital expenditure in this case. It is actually penalized.

Mr. IRWIN: It is quite true that it will be more difficult for a corporation of the kind you describe that has made extensive capital expenditures in the base period to achieve increased research expenditures in the following years.

Senator LEONARD: Yes; you put it that way.

Mr. IRWIN: I might add that this point was placed before the Government, and I can assure that it was carefully considered. The way in which the law appears is the policy decision of the Government.

Senator LEONARD: I would have thought it would have been the other way in view of the fact that the capital expenditures are treated differently from the current expenditures that there would have been two bases to encourage the companies to do both things; to increase their capital expenditures and also their current expenditures.

The CHAIRMAN: Do you mean by establishing over a period in the past a standard of capital outlay or expenditure?

Senator LEONARD: That might be one method, but certainly to put the two together means that the company which has already gone ahead with a heavy capital expenditure is penalized. It would have been quite simple, it seems to me, to have separated the two.

The CHAIRMAN: Yes. The other thing, Mr. Irwin, is that the current expenditures are a deduction—and the capital expenditures are also—from income in the year in which they are made.

Mr. IRWIN: Yes, sir.

The CHAIRMAN: If there is no income—if the deduction throws the company into a loss in that year is it the plan that the loss is carried forward in the ordinary way of any loss that results from a deduction of expenses?

Mr. IRWIN: Yes, sir, this could create a business loss that could be carried forward in the same way as any other business loss.

The CHAIRMAN: It can be carried back one year or forward five years?

Mr. IRWIN: Yes.

The CHAIRMAN: The other point I have is in relation to the capital expenditures. If you should dispose of those capital assets afterwards and make a gain then there is recapture?

Mr. IRWIN: Yes, sir. There is provision that if assets which were acquired in respect of scientific research are subsequently disposed of something must be taken into income. I believe the Government felt that if this provision were not placed in the law it would be possible for a company to acquire a substantial volume of assets and thereby show a substantial increase in research expenditures, claim the additional 50 per cent deduction for that year, and then in the next year dispose of the assets.

The CHAIRMAN: But there is this problem here that you have two elements of recapture. One would be recapture of the extra 50 per cent, the excess of deduction for scientific research, in the event of a sale of capital assets, and there is a formula for recapture up to 50 per cent. Then, suppose the capital

asset is sold at a gain then the ordinary recapture provision, bringing the gain up to the extent of the depreciation that has been taken, applies bringing that into income for that year too?

Mr. IRWIN: Well, the ordinary recapture provisions apply with respect to the 100 per cent deduction, and the provisions in the new section 72A apply only with respect to the additional 50 per cent deduction.

The CHAIRMAN: But the point is that whatever I sell the capital asset for what is left after I have written off the 100 per cent in the year in which I got it is gain, is it not?

Mr. IRWIN: Under the ordinary recapture provisions, yes, sir.

The CHAIRMAN: So I am going to be faced with recapture on the sale price of up to 100 per cent of the cost, and I am going to be faced with recapture of the 50 per cent?

Senator LEONARD: It is given by this bill and then taken away as and when you sell.

Mr. IRWIN: If you sell the assets in respect of which you claim the additional 50 per cent deduction.

The CHAIRMAN: How do you distinguish my expenditure on capital assets, say, in putting up a building? How do I distinguish as between the 100 and the 50? What part of the building? I would like to relate the extra 50 per cent to some part of the building that was not worth anything.

Mr. IRWIN: I will have to refer to my colleague, Mr. Harmer.

Mr. HARMER: I do not know that I understood your question. Are you disposing only of part of the building?

The CHAIRMAN: I put up a building. I get 50 per cent deduction. At a subsequent period I sell all these buildings. Then there is a recapture of the 100 per cent in the ordinary way and there is a recapture of the 50 per cent under this provision? Is that correct?

Mr. HARMER: That is correct.

The CHAIRMAN: Could I allocate the capital assets—say, could I say that the least valuable one was put up, that they were the ones I got the 50 per cent increase on?

Mr. HARMER: I would hope not.

The CHAIRMAN: I do not know.

Senator KINLEY: Is there any question of a successful conclusion being necessary to qualify you when you apply for deduction for research?

Mr. IRWIN: No, sir. It is not intended to wait and see whether the research produces anything of value. It is deductible in the year in which the expenditure is made.

Senator KINLEY: We are told how expensive it is to have research into antibiotics and new drugs. Would they enter the field of incentive or new research, would they be qualified, in the case of a manufacturer of antibiotics or new drugs. There is an immense amount of money spent on this.

Mr. IRWIN: I should think so. Of course, the determination of whether a particular expenditure is on account of scientific research or not will have to be made by the Minister of National Revenue. The bill before us provides that he may obtain the advice of other agencies of Government, in determining whether or not an expenditure is on account of scientific research. Personally I should think the kind of expenditure you mention is research expenditure.

Senator KINLEY: We know that the expense of failure in these operations contributes largely to what we call the excessive cost of new drugs. Does the reclaiming of the amount have anything to do with it?

Mr. IRWIN: The provisions we have called recapture provisions and which we have just discussed, refer only to the disposition of capital assets acquired for research.

Senator KINLEY: I see.

Senator LEONARD: I take it that the 5 per cent limitation has disappeared now, and also the question of approval of a program by the minister; and instead of that it is a question of determination whether the expenditure is a scientific expense for the purposes of the act.

Mr. IRWIN: Yes sir. What used to be referred to as the 5 per cent rule has disappeared.

The CHAIRMAN: Is there not some provision here that the minister may consult with the National Research Council?

Mr. IRWIN: Yes.

Senator LEONARD: That is only with respect to the question of the expenditure itself being within the provisions of the act?

The CHAIRMAN: Yes. There are two questions I should like to ask. You have a formula and some provisions dealing with associate companies, dealing with scientific expenditure and also as to recapture. In relation to associated companies how are they treated as against any other company in connection with scientific research expenditures?

Mr. IRWIN: The law provides that where companies are associated, the increased expenditure for the associated group must be determined and then that total for the group is apportioned among the members of the group.

The CHAIRMAN: On what basis?

Mr. IRWIN: On the basis of the increased expenditure which each member shows.

The CHAIRMAN: You take the expenditures of the base year and then you take the expenditures of the taxation year and establish the percentage?

Mr. IRWIN: It is quite a complicated formula, I am sorry to say, but perhaps I could explain by means of an example. Suppose we have associated companies A and B and suppose company B acquires the business of company C which was associated with it in the past year. This is an added complication, which you have not referred to, but it is in the formula dealing with associated companies. This added provision to which I refer merely is to the effect that, if the company which was associated in the base period has been acquired by another company, the base of the acquired company must be included in the base of the company which takes over the business. Suppose the company A spends sixty in the base period and a hundred in the year in question, and company B spend \$110 in the base period and \$150 in the year in question, the first step would be to determine the expenditures made in the year by corporation A, deduct its base expenditures and also deduct any payments which it may have received from Government, to find its increased expenditure. The next step is to find the aggregate expenditures in the year, of all the associated companies, and deduct their base expenditures and anything they have received from governments, to find the total increased expenditures for the group. Thus you find a total increase for all the associated companies.

The CHAIRMAN: That is the sum total of those?

Mr. IRWIN: Yes. Then you apply the formula which is the amount determined for our company "A" over the amount determined by all the companies in the group, times the increased expenditures for the group.

The CHAIRMAN: Yes, and when you do that calculation what is the result?

Mr. IRWIN: You get a proportion of the increased research expenditures for the group as a whole. The effect of this formula is, of course, that the total

of the increased research expenditures for each member of the associated group, the aggregate of the increases shown for each member of the group, may not exceed the aggregate shown for the group as a whole; and this is intended to prevent the associated companies shifting their research expenditures in such a way as to concentrate the increase in one or two companies.

The CHAIRMAN: Does it have to be that complicated, Mr. Irwin?

Mr. IRWIN: I would certainly welcome a formula which was not so complicated.

The CHAIRMAN: Well, I will give you a suggestion for some of those which come later, but at the moment I have not any suggestion for this, except to deduct the dollars that each one spends. Why do you have to make any difference because the companies are associated?

Mr. IRWIN: I think, sir, because otherwise it would be very easy for associated companies to shift their research expenditures so that one or two would show a very large increase.

Senator HUGESSEN: Those are the companies that would be earning money.

The CHAIRMAN: Yes. I mean, is the suggestion that because I am earning money I am going to spend this amount of money on research?

Mr. IRWIN: Well, if it were not for this all the companies in the group, for example, might in the year we are looking at spend exactly the same as they had spent in the base period. If they could arrange for one company in the group to do all the research that company would show a great increase, and that one company would qualify for 150 per cent deduction, but the total increase in scientific research would be nil, looking at the group as a whole.

The CHAIRMAN: Then on that basis you are suggesting that this allocation where you have associated companies is beneficial to the association of companies?

Mr. IRWIN: No, sir. It is designed to prevent associated companies getting an advantage from this without increasing their research.

Senator HUGESSEN: Like putting all the expenditures of all the companies into one bottle?

Mr. IRWIN: Yes, that is right.

Senator MCCUTCHEON: I know of cases where associated companies have engaged in some business and all those companies up to date have done all the research, and this provision, as I understand it, is designed for the group as a whole.

Senator LEONARD: Would it not be simpler to say that there would be no allowance in the case of associated companies beyond the total amount of the increase of all the associated companies, over the year?

Mr. IRWIN: Well, in effect I think this does that, but it goes further and says how it shall be allocated among the companies.

Senator LEONARD: As long as you have the bar against any overall increase.

Mr. IRWIN: Moreover, this takes care of the additional situation where one of the associated companies may have taken over the complete business of a company that was associated in the base period and is no longer in existence in the year in which we are looking at.

The CHAIRMAN: Mr. Irwin, that does not present a problem. If in the taxation year there is no increase in research expenditure unless the expenditure exceeds the sum total of the expenditure of these companies in the base year or the base years, and then you separately provide if there is an acquisition, the base of that company that is acquired has to come into that base period calculation. Then you get rid of the formula and pages of calculation here.

Senator LEONARD: As long as they don't get an overall increase.

The CHAIRMAN: That is right.

Mr. HARMER: You are still left with the problem, Mr. Chairman, of where the group as a whole expended one dollar more. It would then get under your suggested amendment.

The CHAIRMAN: No; they would only have a dollar of increase.

Mr. HARMER: Who would get it?

The CHAIRMAN: The company which spent it.

Mr. HARMER: Well, all this attempts to do is allocate what is available to the group as a whole among the group.

Senator McCUTCHEON: But if you allocate to some which have engaged in research and to others which have not, they are still all associated. Assuming some companies are profitable and they increase their research and get a certain credit, I will agree they should not get more credit, that the total credit should not be in excess of the total among the group. Would your formula allocate that increase among all the associated companies, some of whom have never done any research and maybe operating at a loss?

Mr. IRWIN: No, sir.

Senator McCUTCHEON: Well, there could be groups of associated companies, many of which are operating at a loss, which do no research, and have no intention of doing research. Do you merely allocate among those who do research, and leave out some of the associated companies?

Mr. IRWIN: It is allocated in proportion to the increase in research done by the companies in the group; or to express it in another way, only those companies in the group which show increased research expenditures are allocated a portion of the total of the increase of the group.

Senator McCUTCHEON: And if only one showed increase, that company would receive the full benefit?

The CHAIRMAN: But there is a catch there.

Mr. IRWIN: I think that is the way it works.

The CHAIRMAN: Let us take the case of three associated companies. You start out by taking what your base is, then you take what they spend in the taxation year, and the difference is the increase over all. Then on that basis you allocate the increase to the various companies in the association that they actually made in increased expenditure?

Mr. IRWIN: That is right.

The CHAIRMAN: But the effect of associating them is that you build up a higher base.

Senator ROEBUCK: I do not see why you should have to discriminate against groups of companies. One manufacturer of shoes, for instance, may experiment and benefit the whole trade, while another manufacturer may do no research or experiment.

The CHAIRMAN: But this is associating groups for the purpose of income tax and does not take into account the ordinary operations of an independent manufacturer.

Senator KINLEY: Does not each company have to show its expenditure?

The CHAIRMAN: Let us suppose that there are three companies in a group, and one spends \$200,000 in research, and the other two companies spend \$50,000 each. That is \$300,000 on behalf of scientific research expenditure. If in the next year the group have spent \$400,000, but the one company may have had only \$5,000 in the base period and spent \$50,000 in the taxation

year, does this not bring down the amount of the increase that is allowed because of the putting together of these companies' expenditures in the base period?

Mr. HARMER: It comes down to individual members' credit but only to the extent that other members of the group have made less expenditures in the tax year than they did in the base years.

The CHAIRMAN: Therefore this formula will produce something less in the case of associated companies than the sum total of the actual increase for the company in scientific expenditure in the taxation years.

Mr. HARMER: If you only added up all the increases that come into the sum total, yes, but if you take all the increases and deduct all the decreases it will come up to the same thing.

The CHAIRMAN: I am not concerned about the decreases, am I?

Mr. HARMER: I think we are, Mr. Chairman, otherwise we would do what Senator McCutcheon said it would be very easy to do before, put all your scientific expenditures in a company which did not have any before.

The CHAIRMAN: Or disassociate myself and achieve that result.

Mr. HARMER: Of course that is another matter.

Senator CROLL: Mr. Chairman, aren't they trying to foresee the problems that may arise at that time and perhaps are groping a bit on this? You cannot say they are being unfair to anyone but they are rather foreseeing such problems as you have already suggested to the committee with respect to another section and attempting to lay down a formula which may or may not work out in the end and they may have to come back and correct that formula, but for the moment it does not appear to me to do any harm to anyone. Isn't that what they are saying in effect?

The CHAIRMAN: Yes, in effect, but I am not so sure that in connection with scientific research that we should work out any formula that will allow to any company whether it is an association or not less than the increased expenditure.

Senator CROLL: But the associated companies stand in some different position than does the individual company, and what they are trying to do is to stop a little finagling that often goes on between these associated companies in such a way as Senator McCutcheon and others have said, about transferring or diverting from one to the other, and they are trying to have some control. They may not have the control they think they have but on the other hand aren't they entitled to try that out?

The CHAIRMAN: What we are overlooking is the purpose of this legislation. As I take it, the purpose is so that companies may increase their efficiency or develop a better product or tailor a product so that it will be attractive in the export market, and this is the justification that the Government puts forward for allowing these expenditures as deductions because in the long run they say it will be of benefit to Canada by providing more employment, more export markets and therefore the revenues will benefit by that increase. These are all purposes to be achieved. Now if that is the objective in relation to scientific research what difference does it make who spends the money?

Senator KINLEY: As long as they spend the money?

The CHAIRMAN: Yes, as long as they spend the money, because they are not going to make expenditures foolishly.

Senator CROLL: It may make a difference of revenue. Isn't this a rather careful step forward, a little hesitant step in trying to grope their way?

The CHAIRMAN: I would agree with that, Senator Croll, particularly in view of what I said the other night, that this is the first venture in the way of allowing in excess of 100 per cent expenditure as a deduction and to that extent I would say you should walk cautiously and maybe at the same time carry a big stick. I am raising these points now because these positions may develop and they may have to revise this thinking.

Senator CROLL: Have they done anything else but revise on this act?

Senator McCUTCHEON: Mr. Chairman, if two associated companies in the base year each spend \$100,000, and in the present taxation year Company A will spend \$100,000 and Company B will spent \$150,000. Therefore the associated companies have increased their total expenditures by \$50,000 and are entitled to the extra credit on that, I assume, but who gets the \$50,000 credit.

Mr. IRWIN: The company which makes the increased expenditure.

Senator McCUTCHEON: That is not what I understood from the Chairman's remarks.

Senator LEONARD: I understood that each company got half of it.

Mr. HARMER: That is what will happen in your example. The example we are concerned about is where Company A spends \$10,000 less than it did in the base period and Company B spends \$50,000 more, the overall increase being \$40,000, and instead of giving the whole \$50,000 to B and nothing to A, B would now get the whole \$40,000.

Senator McCUTCHEON: I see. If that's the way it works, it is all right.

Senator HUGESSEN: Let me give another example: Suppose three associated companies, A, B and C, in the base year A spends \$50,000, B \$50,000 and C \$100,000. In the next year, Companies A and B spend nothing and Company C spends \$200,000. That means that for the group as a whole there is no increase.

Mr. IRWIN: Nobody gets anything in that case.

Senator McCUTCHEON: C would, of course, get the full \$100,000 without the 5 per cent limitation?

Mr. IRWIN: Yes.

The CHAIRMAN: Are you sure, senators, that you all understand the section sufficiently?

Senator CROLL: I am sure that we do not understand it.

Senator McCUTCHEON: I think if you add the word "sufficiently", I would say yes.

The CHAIRMAN: Sufficiently for passing the section. I think we have indicated that it is complicated. Mr. Irwin, if you did not believe it before we started you must believe it now. I do not think there is anything more we can do. We have your assurance, Mr. Irwin, that it is workable and does not work any injustice, and we have Mr. Harmer's assurance too to that effect.

Mr. IRWIN: We hope so.

The CHAIRMAN: Shall these sections 2, 15, and 16 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Now, we have to deal with sections 10 and 11, production incentives.

In view of the complicated nature of this formula I do not know what we are going to gain by trying to analyse it. First I would like to ask Mr. Irwin a question: If we were looking for simplicity what objection would there be to granting a percentage of the increase in sales as a straight deduction from tax otherwise payable. Supposing the increase in sales during the year for the base period was \$50,000, and supposing you said, "Well, to that extent we will allow you 2 per cent or 2½ per cent on that increase in sales as a deduction against tax", that would have the virtue of simplicity, would it not?

Mr. IRWIN: I think so. I am not sure that I can see all the results that might flow from this.

The CHAIRMAN: You would still need your provisions to establish the amount of the increase by setting out how you arrive at the sales base and determine the increase. You still have to deal with the artificial transactions, but the formula for determination here is based on an allowance of 50 per cent of the taxes that would otherwise be payable in relation to the increased amount of sales, and that becomes a very complicated formula.

Mr. IRWIN: Of course, this might make a great difference in its effect as between companies. A company which had increased sales of \$500,000 would get a very large tax saving; it might not have a large amount of taxable income. This formula here, of course, relates sales to taxable income, and provides a concession which is related to the taxable income of the company.

The CHAIRMAN: When I said "2½ per cent," I talked about that in relation to the \$50,000. I would expect that as the sales increased that would be graded, that percentage rate would be graded down.

Senator McCUTCHEON: It does, however, discriminate between companies who have different profit margins. Taking your figure of \$50,000, I can think of some companies that would pay more tax on that increased sales because normally they operate on a margin where a deduction of tax would be equivalent to the tax on increased sales.

The CHAIRMAN: You are talking of companies within the eligibility list here—manufacturing and processing companies?

Senator McCUTCHEON: Processing companies.

The CHAIRMAN: There are certain exclusions on processing companies, packaging. On a \$50,000 increase in sales to get \$1,230 is quite a struggle. However, I have had my say on that, and I am only throwing it out as a suggestion, but I think this method of making an allowance is not new in the Income Tax Act.

Mr. IRWIN: I might add, if I may, Mr. Chairman, that part of the complexity of this provision arises because of our dual rate of income tax, the lower rate on the first \$35,000 and the higher rate on the excess over \$35,000.

The CHAIRMAN: Sometimes, when you find a difficulty of that nature presents itself, you try to find another approach, and that difficulty would not present itself if you could settle on proper percentages in relation to the increased volume of sales.

Mr. IRWIN: Yes, but would you not have to have a long series of rates?

The CHAIRMAN: After all, have you looked lately at the list of rates in the table for individual income tax?

Mr. IRWIN: Yes.

The CHAIRMAN: Well, you have a long list there.

Mr. IRWIN: A series of graduated rates for individuals, that is quite true.

Senator CROLL: Mr. Chairman, I am intrigued by what you said, but I do not quite get the reply to it. I am interested to hear Mr. Irwin's views on that. He said there may be some difficulty because of the different rates of the tax, and the \$35,000 that he has in mind, but is that the only objection.

Mr. IRWIN: I think the other objection has already been referred to by myself and Senator McCutcheon, that this approach, unless we had very carefully graduated rates, would have unequal impact among companies, depending on their ratio of profits to sales.

The CHAIRMAN: Are we wedded to the principle of equal impact?

Senator CROLL: Are not we?

The CHAIRMAN: For a company that increased its sales by \$50,000, it is not necessarily going to end up, in this calculation, with \$1,230 of deduction from taxes because the unequal factor is for operating cost and the other deductions.

Mr. IRWIN: I would not like to suggest, Mr. Chairman, that there is not a simpler way to provide an incentive for businesses. One can think of many ways in which tax concessions could be provided. I think all I could say is that the Government, after considering a great many possible methods, decided upon this one and, of course, as you know, it is my role to try to explain what we have here and not to defend it.

The CHAIRMAN: I was not trying to embarrass you; I would not do that: I am trying to get your approach to an alternative method, as to whether it had some attraction. It certainly has the virtue of simplicity.

Senator DROUIN: But would it affect the Government revenue if we changed from his formula to your simpler formula, Mr. Chairman?

The CHAIRMAN: It would only if your graduated rates were adjusted to give more benefit to the taxpayer, but by adjustments in rates you could achieve the same result without all this calculation. You might deprive the lawyers and accountants of a little income, but maybe they would give that up for the good of the cause.

Senator CROLL: This formula which you have decided on, may I ask you whether it is being applied in other countries?

Mr. IRWIN: I do not know of any country that does use this particular kind of incentive.

The CHAIRMAN: When you say, "this particular kind of incentive," certainly in the European countries they do follow the principle of allowances in excess of 100 per cent of expenditures as a deduction before the calculation of tax.

Mr. IRWIN: Yes, there are many kinds of tax concession and incentive, but I do not know of one that is tied to increased sales in the particular way this one is.

Senator DROUIN: Even in West Germany.

Mr. IRWIN: Some countries, I know, have large concessions based on increased export sales, and I think the concession in those cases was tied to greater capital cost allowances, and was not a deduction from taxes.

The CHAIRMAN: They have a capital cost allowance in excess of 100 per cent, and they have investment reserves where you are allowed to write off in excess of 100 per cent, and I think there are some sales incentive plans too, but I am not sure. However, all I understood Mr. Irwin to say was the formula and the approach which this bill achieves is not one that he has seen anywhere else. Is that right?

Senator DROUIN: He has not looked, perhaps.

Mr. IRWIN: I do not know what the result it achieves will be. We have not seen that yet. The mechanics of this incentive system certainly were not copied from that employed in any country we know of.

The CHAIRMAN: I would hope in a country where it had been operating for some time they would have achieved a little more simplicity, and we might look at it and see what they have done.

Mr. IRWIN: We do try to keep informed on methods employed by other countries. I would like to suggest, if I may, that while this formula does look complicated, for a great many companies it will be reasonably straightforward. It will be reasonably straightforward. They will know their sales in the base period; they will know their sales in the year in question and they can very easily calculate their increased sales. They take the increased sales in the year

over sales in the year and to arrive at a percentage. The percentage is applied to taxable income to determine the taxable income attributable to increased sales. The tax on that taxable income is then abated under this provision.

Senator DROUIN: What is the base year, 1961-62?

Mr. IRWIN: For the first year there is one base year, that is the last taxation year ending before April 1, 1962. For the second year in operation the base will be the average of the two complete previous taxation years, and thereafter the base will be the average of the three previous taxation years.

Senator DROUIN: So the years which will be used as a base have already expired and passed.

The CHAIRMAN: No, only the first one.

Senator DROUIN: What would prevent a company from reducing its sales in one year and they can resume then the impulse in their sales?

The CHAIRMAN: When you are dealing with the year going forward from April 1, 1962, you take the net sales for the previous year, then in 1963 the base would be a half of 1961 and 1962, and when you come to 1964 it would be a third of 1961, 1962 and 1963; is that right, Mr. Irwin?

Mr. IRWIN: That is right.

The CHAIRMAN: If you reduce for a while you only get an over-all lower base.

Senator DROUIN: A lower base and better reductions later on.

The CHAIRMAN: There are provisions for getting at artificial sales, and what might be called the correlation which could develop in sales among a group of associated companies. I suppose if the increase in sales is not actually an increase in the volume, but only in the dollar amount, you would still qualify for this benefit?

Mr. IRWIN: Yes.

Senator ISNOR: Have you any other incentive rebate such as this applied to other than those specified in this particular clause? I have in mind those exporting firms who are looking for overseas business. Is there any incentive for increases of business in their line?

Mr. IRWIN: There are a number of provisions in our law which could be described as incentive measures. But to answer your specific question neither this provision nor any other which I can think of is directly connected to export sales.

Senator ISNOR: It only applies to manufacturing and processing?

Mr. IRWIN: This applies to manufacturing and processing companies, but it applies to sales in Canada and export sales.

Senator ISNOR: That means that these manufacturers and processing firms who spend large amounts on advertising—it is the net sales that you take into consideration in arriving at your deductions?

Mr. IRWIN: That's right, sir.

Senator ISNOR: Why wouldn't that same plan, looking at it from a wide angle, apply to the exporting company whose business we are so anxious to promote?

Mr. IRWIN: This does not apply to exporting companies.

Senator ISNOR: It only applies to manufacturing and processing companies.

Mr. IRWIN: You are suggesting this might apply to companies who only export.

Senator ISNOR: Right.

Mr. IRWIN: I can only answer, sir, that the decision of the Government was to confine this to manufacturing and processing companies. I recall that

the Minister emphasized that this was a plan to provide a stimulus for secondary industry in Canada for the manufacturing and processing segment of our economy. Of course if they have an incentive one would expect that the exporting companies of which you speak—

Senator ISNOR: I cannot hear what the witness is saying. There is a conversation going on beside me.

Mr. IRWIN: I think I said one would assume that if the manufacturing and processing companies in Canada are induced to increase their output there would be more goods for the exporting companies to handle.

Senator ISNOR: I raised that point, Mr. Chairman, because of the effort being made by the Minister of Trade and Commerce to increase overseas business, and I should think if he is willing to give our domestic firms who are manufacturing and processing an incentive, then I think the same should apply to these firms who are trying to bring new business and new money to us from overseas connections.

The CHAIRMAN: I can quote Senator Croll in relation to scientific research. This is a venture in a new field and they are going to the basic operation which would be the manufacturing and process where the first impact on your economy would take place. You wouldn't manufacture more goods unless there was a market for them. This is an inducement to manufacture more but the sales of goods must be pushed or you cannot keep on manufacturing them. At some date this may be extended to a broader field. That is a matter of Government policy. I think it is right we should make the suggestion they should have another look at that.

The CHAIRMAN: Now sections 15 and 16—I am sorry, sections 10 and 11, we have already done 15 and 16, but we now want to deal with sections 10 and 11. They provide rules for the purposes of production incentive. Also clause 21.

Mr. IRWIN: Clause 21 amends the section 85I which was the section dealing with amalgamations. Most of the amendments provided here are consequential upon the new provisions dealing with the production incentive, and the new provisions dealing with scientific research, and the new provisions dealing with oil and gas companies.

The CHAIRMAN: That refers us to section 21, or rather to section 19 which covers a number of pages dealing with oil and gas. There was a general question I wanted to ask, Mr. Irwin, concerning oil and gas companies, whose principal business is oil and gas, and who are now under the law entitled to write off exploration expenses against their income, isn't that right?

Mr. IRWIN: That is right.

The CHAIRMAN: So that for a company whose principal business and whose principal source of income is oil and gas this does not add any benefit.

Mr. IRWIN: Yes, sir, this extends the definition of exploration and drilling expenses to include amounts paid for oil and gas rights.

The CHAIRMAN: Yes, well I was going to come to that in a moment because there is a corollary to that. It is that if you do dispose of those you have to bring the proceeds of the disposition back into income. At the present time if an oil company whose principal business is producing income from oil and gas operations, if they acquired leases or a right to explore, that was treated as a capital asset, was it?

Mr. IRWIN: Generally, however, there was a provision that if property was abandoned without achieving commercial production, and if payment for that property had been made to a Government then that cost was treated as an exploration expense. But payments for other oil and gas properties and payments for others than those paid to the Government, and payments for

oil and gas properties which were not abandoned were treated as capital expenditures, and the only way in which that cost is written off is through percentage depletion.

The CHAIRMAN: Yes. Well, now, this extends the field in that direction by saying that any company which has income from oil and gas, even though it were a subsidiary part of a business, and it joins in exploration for oil and gas to the extent of the income that it has from that source, it may charge off those exploration expenses.

Mr. IRWIN: Yes, Mr. Chairman.

The CHAIRMAN: So that is an extension.

Mr. IRWIN: That is correct.

The CHAIRMAN: But then in changing the law in relation to the right to explore and saying when this bill becomes law a company whose principal business is operating in this field may charge as an exploration expense the cost of the right. Then later, if that asset is disposed of—I do not mean abandoned—but sold, then the proceeds of that sale must be brought into income?

Mr. IRWIN: That is correct.

The CHAIRMAN: And into income in the year in which the proceeds are received?

Mr. IRWIN: Yes.

The CHAIRMAN: In that connection there is a word "consideration" used here on page 26, at line 20. What is your concept of it? Can there be any confusion in that word? I used the expression proceeds of disposition. Is there any different connotation to the word consideration there?

Mr. IRWIN: There are so many kinds of arrangements in the oil and gas industry I believe the draftsman felt here he had to use words which could cover a number of possibilities.

The CHAIRMAN: It says here, "Any amount received by the corporation, association, partnership or syndicate as consideration for the disposition thereof, shall be included in computing its income..." Now, then, the proceeds of the distribution, that is the sales price. But what could be included in the word "consideration" there? Do you mean if I received shares the shares would be valued and that would be the consideration.

Mr. IRWIN: I should think so.

The CHAIRMAN: Is there any other type of consideration that could be included in that word, Mr. Harmer?

Mr. HARMER: I do not know.

Senator CROLL: You could conceivably receive another parcel of land.

The CHAIRMAN: Then it would have to be valued?

Senator CROLL: The word "consideration" is pretty broad and that is the intention I gather they are trying to achieve?

Mr. IRWIN: Yes, that is right.

The CHAIRMAN: What other purposes are served by this amendment, Mr. Irwin?

Mr. IRWIN: Clause 19 implements no less than seven paragraphs of the budget resolutions.

The CHAIRMAN: You do not need to enumerate them. We have read them many times. Do we run into some formula here? How are associated companies dealt with here?

Mr. IRWIN: I think for once, Mr. Chairman, we have no section dealing with associated companies in this clause.

Senator DROUIN: That certainly simplifies matters.

The CHAIRMAN: How do you deal with that situation, if at all?

Mr. IRWIN: One feature which has not been mentioned is that it also broadens the present provisions to permit an individual to deduct exploration and drilling expenses up to his income from oil and gas production.

The CHAIRMAN: Could we revert to this other question. Supposing an oil company acquires a right to explore at Government auction and it subsequently abandons that in the meantime. Under the present law it would have written off the cost at auction?

Mr. IRWIN: No, sir. Under present law the amount paid at Government auction is classified as an exploration and drilling expense when it is abandoned.

The CHAIRMAN: That is what I said. I said if the property is abandoned the oil company may write off the cost price that it paid at auction. Up until the time of the abandonment what is the position of the cost and the acquisition of that right—is it a capital asset?

Mr. IRWIN: It is a capital expenditure.

The CHAIRMAN: A capital expenditure which could be depreciated—is that right?

Mr. IRWIN: No, Mr. Chairman, not depreciated under the capital cost allowance provisions, but such a company is entitled to percentage depletion. It is the means by which they can write off capital costs which are not otherwise deductible. But of course the percentage depletion is not tied to the amount of the capital expenditure.

The CHAIRMAN: What would be the relationship of that rule of depletion if I abandon the property? Let us forget about this bill for the moment. Would I not then be able to write off whatever balance is left?

Mr. IRWIN: No. The amount you have paid, it is called a bonus cost in the trade, becomes an exploration and drilling expense of the company and can be deducted in the same manner as other exploration and drilling expenses. You recall they may be carried forward indefinitely until there is enough income to absorb it.

The CHAIRMAN: So really the only difference is at the present time under the present law a company whose principal business is gas and oil operations, if it acquires a property at public auction it can charge depletion against it at prescribed rates, and when the property is abandoned it can write off whatever balance of cost there is?

Mr. IRWIN: I would interject that there is no concept of balance of cost because depletion is $33\frac{1}{3}$ per cent of profits attributable to oil and gas production. It is not related to capital cost of any particular item so the total bonus cost would become an exploration and drilling expense upon abandonment.

The CHAIRMAN: So you are changing that now, are you, to say that?

Senator MCCUTCHEON: It becomes a drilling cost at the time—

The CHAIRMAN: When I expend the money it becomes a cost, and when I dispose of the right what I receive becomes income?

Mr. IRWIN: Yes, when you expend money it becomes a drilling exploration expense.

The CHAIRMAN: Shall this section carry?

Some hon. SENATORS: Carried.

The CHAIRMAN: Now I think we have covered all the sections. Shall I report the bill without amendment?

Some hon. SENATORS: Carried.

—The Committee thereupon concluded its consideration of Bill C-78, to amend the Income Tax Act.



First Session—Twenty-fifth Parliament

1962

THE SENATE OF CANADA

PROCEEDINGS

OF THE

STANDING COMMITTEE

ON

BANKING AND COMMERCE

To whom was referred the Bill C-79, intituled:

“An Act to amend the Estate Tax Act”

The Honourable SALTER A. HAYDEN, Chairman

THURSDAY, NOVEMBER 22, 1962

WITNESSES:

Mr. W. I. Linton, Administrator, Estate Tax Branch, Department of National Revenue and Mr. E. H. Smith, of the Department of Finance.

REPORT OF THE COMMITTEE

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OTTAWA, 1962

THE STANDING COMMITTEE ON
BANKING AND COMMERCE

The Honourable Salter Adrian Hayden, *Chairman*

The Honourable Senators

Aseltine	Gouin	O'Leary (<i>Carleton</i>)
Baird	Hayden	Paterson
Beaubien (<i>Bedford</i>)	Higgins	Pearson
Beaubien (<i>Provencher</i>)	Horner	Pouliot
Bouffard	Howard	Power
*Brooks	Hugessen	Pratt
Burchill	Irvine	Reid
Campbell	Isnor	Robertson
Choquette	Kinley	Roebuck
Connolly (<i>Ottawa West</i>)	Lambert	Smith (<i>Kamloops</i>)
Crerar	Leonard	Taylor (<i>Norfolk</i>)
Croll	*Macdonald (<i>Brantford</i>)	Thorvaldson
Davies	McCutcheon	Turgeon
Dessureault	McKeen	Vaillancourt
Drouin	McLean	Vien
Emerson	Molson	Willis
Farris	Monette	Woodrow—50.
Gershaw		

*Ex officio member.

(Quorum 9)

ORDER OF REFERENCE

Extract from the Minutes of Proceedings of the Senate, Wednesday, November 21, 1962.

Pursuant to the Order of the Day, the Honourable Senator Brooks, P.C., moved, seconded by the Honourable Senator Choquette, that the Bill C-79, intituled: "An Act to amend the Estate Tax Act", be read the second time.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Brooks, P.C., moved, seconded by the Honourable Senator Choquette, that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative.

J. F. MacNEILL,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

THURSDAY, November 22, 1962.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 10.15 a.m.

Present: The Honourable Senators Hayden, *Chairman*; Aseltine, Beaubien (*Provenccher*), Brooks, Croll, Dessureault, Drouin, Farris, Horner, Hugessen, Irvine, Isnor, Kinley, Lambert, Leonard, McCutcheon, McKeen, McLean, Pearson, Pouliot, Power, Reid, Roebuck, Smith (*Kamloops*) Taylor (*Norfolk*), Thorvaldson, Turgeon, Vaillancourt, Willis and Woodrow—30.

In attendance: Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel and the Official Reporters of the Senate.

Bill C-79, An Act to amend the Estate Tax Act, was read and considered clause by clause.

Mr. W. I. Linton, Administrator, Estate Tax Branch, Department of National Revenue and Mr. E. H. Smith, of the Department of Finance were heard in explanation of the Bill.

On motion of the Honourable Senator Croll, it was Resolved to report recommending that authority be granted for the printing of 800 copies in English and 200 copies in French of their proceedings on the said Bill.

After discussion, it was Resolved to report the said Bill without any amendment.

At 12.30 p.m. the Committee adjourned to the call of the Chairman.

Attest.

Gerard Lemire,
Clerk of the Committee.

REPORT OF THE COMMITTEE

THURSDAY, November 22, 1962.

The Standing Committee on Banking and Commerce to whom was referred the Bill C-79, intituled: "An Act to amend the Estate Tax Act", have in obedience to the order of reference of November 21, 1962, examined the said Bill and now report the same without any amendment.

All which is respectfully submitted.

SALTER A. HAYDEN,
Chairman.

THE SENATE
STANDING COMMITTEE ON BANKING AND COMMERCE
EVIDENCE

OTTAWA, Thursday, November 22, 1962

The Standing Committee on Banking and Commerce, to which was referred Bill C-79, to amend the Estate Tax Act, met this day at 12 noon.

Senator SALTER A. HAYDEN (*Chairman*), in the Chair.

On a motion duly moved and seconded it was agreed that a verbatim report be made of the committee's proceedings on the bill.

On a motion duly moved and seconded it was agreed that 800 copies in English and 200 copies in French of the committee's proceedings on the bill be printed.

The CHAIRMAN: We have with us this morning Mr. E. H. Smith of the Taxation Division, Department of Finance; Mr. W. I. Linton, Administrator, Estate Tax Branch, Department of National Revenue; and Mr. A. L. DeWolf, Solicitor, Department of National Revenue.

Would you come forward, gentlemen. Who is going to be the spokesman?

Mr. E. H. Smith, Taxation Division, Department of Finance: These amendments are mainly of a technical nature; so Mr. Linton will do most of the talking.

The CHAIRMAN: I think the best way to deal with this would be section by section. There is not much in the way of correlation. Section 1?

Mr. W. I. Linton, Administrator, Estate Tax Branch, Dept. of National Revenue: The first section, Mr. Chairman, is put in to perpetuate a method of operation that is now in existence and seemed threatened by a judgment in the Exchequer Court, the point being that if an annuity arises on the death of a person the whole value of the reversion on his death is taxable without any reduction for a hypothetical value it might have had as an interest in expectancy of the recipient before he died.

The CHAIRMAN: What does this propose to do?

Senator HUGESSEN: That is the value of the interest to the successor?

Mr. LINTON: Yes, without reduction for any value for the hope that successor might have had before the death of the person providing it.

The CHAIRMAN: Could you give us an illustration of that?

Mr. LINTON: Yes, an annuity taken out by a man payable to himself for life and his wife on his death. The value is to be taken at the actuarial value it would have for the wife's life at the death of the husband. The suggestion in the judgment was that there should be a reduction from that of some amount of value for it while her husband lived; that upon the death of the husband the wife did not acquire the whole value of the annuity, but only the difference between what she hoped for before he died and what she actually got then.

Senator BROOKS: That would be her interest in expectancy?

Mr. LINTON: Yes.

Senator CROLL: And the suggestion of the court was?

Mr. LINTON: That the value of the annuity on the death of the husband should be reduced by the value of interest in the expectancy the wife might be considered to have had before he died. How you value it, I do not know.

Senator CROLL: It has a germ of common sense to it, has not it?

The CHAIRMAN: Since it is a judgment of the Exchequer Court, senator, we simply look at it as a judgment of the Exchequer Court. Has it been appealed?

Mr. LINTON: No. It had no immediate relevance to the judgment; it was obiter.

The CHAIRMAN: We are getting to the stage where we are putting up barricades against obiter? We are going a long way.

Mr. SMITH: The British have a similar barricade, because they apparently had a similar problem.

The CHAIRMAN: Shall Section 1 carry?

Some hon. SENATORS: Carried.

The CHAIRMAN: Section 2 (1)?

Mr. SMITH: This is to cover the instance where you have a generous citizen who wishes to give a gift to a municipality or government, but he does not wish to give it directly, an action that would qualify the gift for deduction already provided for in the act. He wants to give it through a foundation that he has set up, and such a gift is not provided for in the act. In other words, if he does it directly he gets a deduction under the present act; and if he does it through a foundation he does not get it; and this is to rectify that.

The CHAIRMAN: Does section 2 (1) carry?

Carried.

The CHAIRMAN: Page 2 of the bill, section 2 (2) and (3). They deal with different aspects, do they?

Mr. LINTON: Yes. Subsection 2 extends the allowance made for changing devolutions after death where charities are involved. It was originally provided in the act that a benefit to a charity to qualify for deduction had to be absolute, and this qualification was added to later to make it have to be indefeasible as well. Later there was a provision made that, if within a year an appointment or renunciation was made that resulted in the benefit to the charity becoming absolute and indefeasible, the deduction would be allowable. There was a one-year period for doing that, and it proved, in practice, that one year was not a very long period, and this is extending it to two years in subsection 2; and in subsection 3 it is providing that it will be two years from the date of the act for people who have already died.

The CHAIRMAN: Does section 2(2) and (3) carry?

Some hon. SENATORS: Carried.

The CHAIRMAN: Section 3?

Mr. LINTON: This is a change in the situs rules, necessitated by a plan that has been devised in estate planning, whereby it was possible to set up companies in such a way that no province was able to get any succession duty but, on the other hand, the federal Government would have to make an allowance of 50 per cent. The provinces became quite disturbed about this in several instances, and while it was always realized that having situs rules would lead to occasional cases arising fortuitously where this sort of thing would arise, since the rules would never entirely agree with the common law rules governing the provinces, it was not realized there was a situation where the matter could be constructed so that practically the whole estate of a person could escape provincial taxes and still be entitled to 50 per cent allowance on federal taxes.

The CHAIRMAN: We are talking of the two provinces, are we not?

Mr. LINTON: Yes.

The CHAIRMAN: Ontario and Quebec?

Mr. LINTON: Yes.

The CHAIRMAN: Have you an illustration?

Mr. LINTON: Yes, someone in Nova Scotia, say, could put his fortune into a company incorporated under dominion charter, with a transfer office in Vancouver and Toronto.

Since the nearest transfer office to his place of domicile was in Ontario, he would be entitled under the old rule to 50 per cent allowance on his tax, but having the transfer agency in Vancouver he could transfer his stock there and avoid paying the Ontario tax. The idea of the change is to block that.

Senator LEONARD: Can you explain how it would work in an ordinary transaction, and if a person is domiciled in Ontario, under the new rule what would be the effect so far as shares in various classes of companies, say a company with only shares registered in Ontario, or a case of a company outside Ontario?

Mr. LINTON: The first reference would be to a transfer office in the province of domicile, and if there was one, the credit would show if the deceased was domiciled in Ontario.

Senator LEONARD: It would be the 50 per cent deduction.

Mr. LINTON: That's right, but if the company had no transfer office in Ontario, you would look through your rules to find where the nearest transfer office was in a non-prescribed province, and then the nearest one in a foreign jurisdiction and then the nearest one in a prescribed province, but as long as the domicile is in a province with a transfer office there is no change and the situs is there.

Senator ASELTINE: If a man dies domiciled in Saskatchewan and he has, say, Massey-Harris company shares, and the auditors write to Massey-Harris and say "You must transfer them in Ontario and pay us the succession duty," and if that is paid and you send the receipt to the department for a credit, they say "No, you could have transferred these in Manitoba."

Mr. LINTON: If Massey-Harris shares are transferable in Manitoba, that is what we would have done.

Senator LEONARD: That is what I want to find out. We would have lost a credit.

Mr. LINTON: That would arise from the advice of the company or its agents.

Senator BROOKS: The lawyer looking after the estate would be able to determine that.

Mr. LINTON: There is an agency which gives the transfer offices of all the normally traded corporations. They publish an index which gives this information.

Senator LEONARD: Where does one get that index?

Mr. LINTON: C.C.H. publish it.

Senator McCUTCHEON: I believe I was a director and an officer of a company which gives information like that, before I resigned.

The CHAIRMAN: We know, senator, you would not be a part of that information.

Senator CROLL: Isn't there more that should be done? It is all right to blame the lawyer or somebody else, but the normal thing under the circumstances is to do the same thing as Senator Aseltine did.

Mr. LINTON: To ask the company, you mean?

Senator CROLL: Yes.

Mr. LINTON: If you asked the company, it has the whole story, and all the places where their stock can be transferred. It appears on the certificate.

Senator ASELTINE: Not on all certificates.

Mr. LINTON: There may be exceptions, but generally it does appear on the certificate where it is transferable. It says on the certificate that this is transferable at such-and-such places.

Senator ASELTINE: We paid \$600 there that should not have been paid, and the department wouldn't do a thing about it.

The CHAIRMAN: We are not going to be able to deal with that problem under this section of the bill. You haven't dealt with (b) and (c).

Mr. LINTON: (a), (b) and (c) are the three steps you take to arrive at the situs, if there is no transfer office in the province of domicile. If there is no transfer office in the province of domicile, then the situs is deemed to be in the nearest transfer office in a non-prescribed province. This is the situation I used in the example I gave of the Nova Scotian who puts his money into stock in a company whose stock is transferable in Vancouver or Toronto. The nearest office in a non-prescribed province is Vancouver. If there is no transfer office in a non-prescribed province, you have reference to one in a foreign jurisdiction, and if there is none in a foreign jurisdiction, then you have reference to the prescribed provinces.

The CHAIRMAN: You put the prescribed provinces at the end of the list because that is where the revenue is abated.

Senator LEONARD: As a result of these amendments is there any case where a double tax would arise, where there is tax payable to a province as well as to the Dominion, and no allowance made by the Dominion for the tax paid to the province as a result of these changes?

Mr. LINTON: I wouldn't think as a result of these changes now. That might arise from the old rules, from other rules not being changed.

The CHAIRMAN: Carried?

Some hon. SENATORS: Carried.

The CHAIRMAN: Section 4, this is very simple.

Mr. LINTON: Section 4 permits the signing of an agreement that the four-year period will not operate for non-reopening of assessments. It will only happen when there is agreement, but we do find we meet estates where there is some contingency which cannot be resolved for a long time: where there is an interest in another estate, or a lawsuit, or there is a contingent liability. The estate would like an assessment without waiting the years which may elapse before this problem is resolved, and if we assess now and the four-year period passes there is either no hope of getting the taxes the asset will produce, or relieving the tax that a contingent liability might cause to be relieved. This amendment provides machinery whereby if the estate chooses the four-year period might be waived.

The CHAIRMAN: It still leaves the position where an estate might not sign the waiver and you have to make an assessment that might not stand up.

Senator BROOKS: That would be only the portion of the estate in litigation, and not the whole lot.

Mr. LINTON: I think the situation would be that it would be either all or nothing.

Senator BROOKS: Just the portion of the estate that was clear would be assessed?

Mr. LINTON: Yes.

The CHAIRMAN: Section 5?

Mr. SMITH: This is to extend the exemption that presently exists in the Act for property of diplomats to officials of specialized agencies of the United Nations such as the International Civil Aviation Organization in Montreal. The situation is that under the present Act any property of more than \$5,000, situated in Canada, belonging to a person who is not domiciled in Canada would be subject to the 15 per cent tax, and it is the policy that these people who consent to carry out their functions here and who have to have some kind of property here in order to do so should not be stuck for tax in respect of property that is necessary and appropriate to the carrying out of their functions. The exemption does not apply, of course, to property of an investment nature.

Senator CROLL: You mention the International Civil Aviation Organization, but it would apply to all agencies of the United Nations?

Mr. SMITH: That is right.

The CHAIRMAN: Section 6.

Senator ASELTINE: This is a section I am interested in. I would like Mr. Linton to explain how a person can get real property from an estate and make sure that they are getting a clear title to it free from any liens that the department might file against it for succession duties.

Mr. LINTON: They can do that by obtaining the minister's consent to transfer it. That will relieve the property of the lien, as long as it can be produced.

Senator ASELTINE: Well, we have applied for them and they won't give them. They say that we have to wait a year, or two or three years before such consent can be issued.

Mr. LINTON: I would be very glad to hear of any case like that. These are obtainable as soon as the tax is paid.

Senator ASELTINE: They hold up the release for some considerable time after that just in case something else may come up that was not disclosed.

Mr. LINTON: That may be so in a case where there was something that was not definite, but where the tax has been assessed and paid a release should be issued at once.

Senator ASELTINE: A purchaser would not be safe in buying a property from an estate without that release, is that it?

Mr. LINTON: No, he would not.

The CHAIRMAN: If a person has been carrying some real estate in a nominee's name, or in the name of a company or an individual and then he becomes an estate, that individual might execute a deed, he might know that he is a nominee but he might not tell the purchaser that.

Mr. LINTON: That is right, as long as it is registered in his name without any suggestion that he is a nominee. There is machinery here proposed by which a province can get out of this lien business entirely, if the province will make an agreement with the federal Government to recognize its consent procedure and undertake not to transfer property of deceased persons without obtaining the federal Government's consent. Then the lien for that province can be waived. There has been some interest in some such thing shown by at least three of the western provinces and they will probably take action on this provision.

Senator BROOKS: Have not some of the provinces been operating on that?

Mr. LINTON: Manitoba always has, Alberta either has started or is about to start, and British Columbia too.

Senator BROOKS: The other provinces are all more or less sympathetic, are they not?

Mr. LINTON: I think so.

The CHAIRMAN: Shall the section carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Shall section 7 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Have you anything to say on section 8, Mr. Linton?

Mr. LINTON: Section 8 is for the purpose of extending further the various provisions affecting corporations controlled by a deceased person so that corporations controlled by that corporation will be caught in the same way.

The CHAIRMAN: Shall section 8 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Shall I report the bill without amendment?

Hon. SENATORS: Agreed.

—The committee thereupon adjourned.



First Session—Twenty-fifth Parliament
1962

THE SENATE OF CANADA
PROCEEDINGS
OF THE
STANDING COMMITTEE ON
BANKING AND COMMERCE

To whom was referred the Bill C-80, intituled:
“An Act to amend the Excise Tax Act”

The Honourable SALTER A. HAYDEN, Chairman

WEDNESDAY, NOVEMBER 28, 1962
THURSDAY, NOVEMBER 29, 1962

WITNESSES:

Mr. K. R. MacGregor, Superintendent of Insurance; Mr. D. K. MacTavish, Q.C., Parliamentary Agent, All Canada Insurance Federation; Mr. E. H. S. Piper, Q.C., Manager and General Counsel, All Canada Insurance Federation, and Mr. M. J. Gorman, Director, Excise Tax Administration, Department of National Revenue.

REPORT OF THE COMMITTEE

APPENDIX

Summary of Presentation by All Canada Insurance Federation

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1962

THE STANDING COMMITTEE ON
BANKING AND COMMERCE

The Honourable Salter Adrian Hayden, *Chairman*

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Croll	*Macdonald (<i>Brantford</i>)	Thorvaldson
Davies	McCutcheon	Turgeon
Dessureault	McKeen	Vaillancourt
Drouin	McLean	Vien
Emerson	Molson	Willis
Farris	Monette	Woodrow—50
Gershaw		

(Quorum 9)

*Ex officio member.

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Thursday, November 22nd, 1962:—

Pursuant to the Order of the Day, the Honourable Senator Macdonald (*Cape Breton*) moved, seconded by the Honourable Senator Emerson, that the Bill C-80, intituled: An Act to amend the Excise Tax Act, be read the second time.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Macdonald (*Cape Breton*) moved, seconded by the Honourable Senator Emerson, that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative.

J. F. MacNEILL,
Clerk of the Senate.

REPORT OF THE COMMITTEE

THURSDAY, November 29, 1962.

The Standing Committee on Banking and Commerce to whom was referred the Bill C-80, intituled: "An Act to amend the Excise Tax Act", have in obedience to the order of reference of November 22nd, 1962, examined the said Bill and now report the same without any amendment.

All which is respectfully submitted.

SALTER A. HAYDEN,
Chairman.

MINUTES OF PROCEEDINGS

WEDNESDAY, November 28, 1962.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 10:30 a.m.

Present: The Honourable Senators:—Hayden, *Chairman*; Aseltine, Beau-bien (*Bedford*), Bouffard, Brooks, Burchill, Croll, Dessureault, Drouin, Gershaw, Gouin, Higgins, Horner, Hugessen, Irvine, Isnor, Kinley, Lambert, Leonard, Macdonald (*Brantford*), McCutcheon, McLean, Power, Reid, Taylor (*Norfolk*), Thorvaldson, Turgeon, Vaillancourt, Vien, Willis and Woodrow.

In attendance: Mr. E. R. Hopkins, Law Clerk and Parliamentary Counsel, and the Official Reporters of the Senate.

Bill C-80, intituled “An Act to amend the Excise Tax Act”, was read and considered.

On Motion of the Honourable Senator Croll it was Resolved to report recommending that authority be granted for the printing of 800 copies in English and 200 copies in French of the Committee’s proceedings on the said Bill.

The following witnesses were severally heard and questioned on the said Bill:—

Mr. K. R. MacGregor, Superintendent of Insurance; Mr. D. K. MacTavish, Q.C., Parliamentary Agent, All Canada Insurance Federation; Mr. E. H. S. Piper, Q.C., Manager and General Counsel, All Canada Insurance Federation, and Mr. M. J. Gorman, Director, Excise Tax Administration, Department of National Revenue.

Mr. MacTavish filed a Summary of Presentation by All Canada Insurance Federation which appears as appendix to these proceedings.

Further consideration of the said Bill was adjourned.

At 1:00 p.m. the Committee adjourned to the call of the Chairman.

Attest.

James D. MacDonald,
Clerk of the Committee.

THURSDAY, November 29, 1962.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 10.00 a.m.

Present: The Honourable Senators Hayden, *Chairman*; Aseltine, Brooks, Burchill, Croll, Drouin, Higgins, Hugessen, Irvine, Isnor, Kinley, Leonard, Macdonald (*Brantford*), McLean, Power, Reid, Roebuck, Smith (*Kamloops*), Turgeon, Vaillancourt, Willis and Woodrow—22.

In attendance: Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel and the Official Reporters of the Senate.

Bill C-80, An Act to amend the Excise Tax Act was further considered.

The Chairman read a memorandum from the Law Clerk and Parliamentary Counsel of the Senate as to the constitutionality of paragraph (b) of subsection (1) of section 4 of the Excise Tax Act in the form proposed by clause 1 of Bill C-80.

After discussion, and on Motion of the Honourable Senator Croll it was Resolved to report the said Bill without any amendment.

At 10.15 a.m. the Committee proceeded to the consideration of other bills.

Attest.

Gerard Lemire,
Clerk of the Committee.

THE SENATE
STANDING COMMITTEE ON BANKING AND COMMERCE
EVIDENCE

OTTAWA, Wednesday, November 28, 1962.

The Standing Committee on Banking and Commerce, to which was referred Bill C-80, to amend the Excise Act, met this day at 10.30 a.m.

Senator Salter A. Hayden (*Chairman*), in the Chair.

On a motion duly moved and seconded it was agreed that a verbatim report be made of the committee's proceedings on the bill.

On a motion duly moved and seconded it was agreed that 800 copies in English and 200 copies in French of the committee's proceedings on the bill be printed.

The CHAIRMAN: Honourable senators, we have before us for consideration this morning Bill C-80, an act to amend the Excise Tax Act. We have with us Mr. K. R. MacGregor, the Superintendent of Insurance, who will deal with the aspect of this bill as it touches on insurance, insurance companies, agents and premiums.

Mr. K. R. MacGregor, Superintendent of Insurance: Mr. Chairman and honourable senators, Bill C-80 has four clauses, the fourth and final clause relating the effective dates of the amendments proposed in clauses 1, 2 and 3.

Clause 1 of the bill relates to the taxation of certain insurance premiums, and that is the only clause of the bill on which I wish to make any comments.

Clause 1 would repeal five sections presently contained in the Excise Tax Act, being sections 3 to 7, inclusive, and would enact five new sections in their stead.

The present sections 3 to 7 of the Excise Tax Act impose a tax on insurance premiums paid by residents of Canada, whether individuals or corporations carrying on business here, where a resident of Canada places fire and casualty insurance covering risks in Canada in a British or foreign insurance company which is not authorized under the laws of Canada or of some province of Canada to transact business in Canada.

Briefly, the tax is ten per cent of the premium paid by a Canadian resident for fire and casualty insurance placed in an unauthorized British or foreign insurance company.

There has been a similar tax of that kind since 1922. There was a section of the Special War Revenue Act, which was the predecessor of the Excise Tax Act, to the same end. In 1922 the tax was five per cent, but in 1932 the tax was raised to 10 per cent, at which level it has remained ever since.

From 1922 until 1961 the tax applied only to insurance premiums on property. Of course, the explanation for that is that fire insurance was the principal kind of insurance, and so it is not surprising that the tax originally applied to the insurance of property, which for all practical purposes meant fire insurance. Over the years, other forms of casualty insurance have come into existence and have greatly increased in importance, and so in 1961 the

Excise Tax Act was amended to extend the scope of that tax beyond merely the insurance of property so as to include other classes of casualty insurance as, for example, liability insurance, and so on.

Senator MACDONALD (*Brantford*): Does the rate remain the same?

Mr. MACGREGOR: The rate remains at 10 per cent, sir.

I may say, however, that for some years now, at least for five years going back to 1957, if not farther, there has been a feeling within the insurance industry, not only on the part of agents and brokers but on the part of the companies themselves, that more and more fire and casualty insurance respecting risks in Canada is being arranged through agents and brokers outside Canada. Agents have represented that they have lost accounts that they had, and the explanation given by them has been that where a foreign industrial company has a branch office in Canada or a subsidiary in Canada there has been a tendency for the parent company outside Canada, that is, the parent industrial company, or the head office of the company outside Canada, as the case may be, to make its insurance arrangements respecting its Canadian operations as part and parcel of its insurance arrangements at its head office outside Canada. In other words, as they have expressed it, to "wrap up" the Canadian insurance coverage with the insurance coverage arranged by the parent itself outside Canada or the head office of the industrial company outside Canada. Both agents and brokers in Canada and the insurance companies themselves through the All Canada Insurance Federation, and otherwise, have for at least five years now been making strong representations that something should be done to stop or discourage the practice. In the budget speech of the Minister of Finance in the Spring of 1961, not 1962, but a year ago or more, the minister intimated at that time that an amendment would be proposed to the Excise Tax Act to broaden the tax, as I described earlier, in respect of insurance placed with unauthorized companies so that it would go beyond the insurance of property alone and would apply to other casualty classes. He went on to say:

There appears to be an increasing tendency on the part of non-resident corporations carrying on business in Canada, and also Canadian corporations which are controlled outside of Canada, to arrange their fire and casualty insurance in respect of risks in Canada either with insurers which are not authorized to transact the business of insurance in Canada or with insurers that are so authorized but through agents or brokers located outside Canada. Undoubtedly, these practices stem from a desire to make all insurance arrangements at the head office of the corporation or at the head office of the parent corporation, as the case may be, rather than from any lack of adequate insurance facilities in Canada.

The minister continued:

Since the practices referred to result in loss of insurance business that would otherwise be transacted in Canada and some loss in tax revenue otherwise payable to Canada, it is proposed as a first step to amend the provision of the Excise Tax Act which at present imposes a tax of 10 per cent of premiums paid by Canadian residents to unauthorized insurers in respect of insurance of property in Canada. The amendment will extend the tax to make it apply to all classes of insurance, whether of property or not, subject to certain exceptions. The exceptions proposed will be marine risks, as at present, life insurance, personal accident and sickness insurance, and, to the extent that such insurance is not available in Canada, insurance against nuclear risks. The practice of arranging insurance of risks in Canada through non-resident agents and brokers is currently being studied and further steps, if found necessary, may be taken to curb this undesirable practice.

That is the end of the minister's statement in 1961.

Now, as I have indicated, the amendment respecting insurance placed in unauthorized companies was made in 1961. Throughout the last five years pressure has continued on the part of agents in particular to see some legislative action taken to discourage the practice of arranging insurance of Canadian risks through agents and brokers outside Canada.

The agents' complaint of course is that they look upon it as business which is properly theirs, for the insurance of Canadian risks, whereas their counterparts outside Canada are deriving the commissions from that business.

One may ask why do the insurance companies complain? Why would they like to see something done also to discourage this practice? I think there are two main reasons: The first is, of course, that they have to listen to the complaints of their agents, and the Canadian managers of fire and casualty insurance companies would like to see Canadian business written in Canada. The second reason is that during the years 1955-1957 in particular, the fire and casualty insurance industry went through a very unsatisfactory period. Their losses were extremely high for many reasons, not only because of some conflagrations and hurricanes, but more particularly through intense competition amongst a very large number of fire and casualty companies operating, all seemingly very hungry to get their share or to increase their share of the fire and casualty premium income in Canada. The result was that in those years there was considerable rate cutting and the companies felt that the insurance of Canadian risks arranged through agents and brokers in more wholesale fashion outside Canada in the manner complained of was exerting further downward pressure upon the premium structure in Canada.

Senator BROOKS: Was the rate cutting done by outside companies or by local companies?

Mr. MACGREGOR: I am not just sure what you mean by outside companies. Most of the fire and casualty business in Canada, 80 per cent approximately, is done by fire and casualty insurers from outside Canada, that are authorized to do business in Canada.

Senator MACDONALD (*Brantford*): Was the rate cutting done by unauthorized companies?

Mr. MACGREGOR: That raises another point. I would like to deal with them together if I may. I would like to make the point now that the companies felt that this practice which seemed to be developing of arranging fire and casualty insurance through brokers outside Canada regardless of whether it was done in an authorized company or in an unauthorized company was exerting downward pressure on the premiums charged in Canada. In other words, the residents of Canada, these industrial corporations that were arranging their insurance outside Canada in this way were getting better rates outside Canada than prevailed in Canada, and even at the prevailing rates companies here were losing millions of dollars in those years. That, I believe, is the second reason why insurance companies here felt strongly that something should be done.

Senator ISNOR: Are fire insurance rates not set locally by a fire commissioner or some other body?

Mr. MACGREGOR: No, Senator Isnor.

Senator ISNOR: I feel reasonably sure that in Nova Scotia fire insurance rates are set by the Nova Scotia fire commissioner.

Mr. MACGREGOR: No. In Canada, fire insurance rates are set by the companies themselves with assistance and guidance from various underwriting bodies.

I may say that both agents and the companies, through the All Canada Insurance Federation have filed briefs with the Government containing very strong recommendations that something should be done to stop this practice.

Through the years since 1957, when this subject has been much to the fore, many complaints have been made about this practice. Many statements were made by agents and others as to the volume of business that was so arranged, and our conclusion in the department was and still is that the figures mentioned were usually greatly exaggerated. There was really no basis, except opinion, for guesses as to what the volume might amount to. Secondly, there seemed to be a strong feeling on the part of agents and authorized companies that the practice was more common amongst unauthorized fire and casualty insurance companies that somehow were reaching out and getting Canadian business in this way.

The department has been administering these sections of the Excise Tax Act from the beginning and our feeling was that the figures mentioned were frequently—and there were all kinds of them concerning the volume—exaggerated, and secondly we had little or no reason for thinking that the business complained of was being placed in unauthorized companies.

Back in 1957-58 we were furnished with lists of many cases where agents or company managers complained that a particular account had been lost by the agent or when canvassed were told that "our insurance arrangements are always made at the home office, we do not want to change them," where they felt the insurance was going to unauthorized companies and it was being arranged through agents or brokers outside Canada.

Senator MACDONALD (Brantford): What has the department to do with that?

Mr. MACGREGOR: We have been charged with the administration of the Excise Tax Act respecting insurance written by unauthorized companies.

Senator MACDONALD (Brantford): But just so far as the tax is concerned?

Mr. MACGREGOR: That is all.

We investigated all of these cases that were given to us and in practically no case did we find upon investigation that the insurance was being placed in an unauthorized company, that it was invariably being placed in some other authorized company. The complaints and representations of the agents and companies also extended to the belief that governments were losing tax revenue, enormous amounts of tax revenue, through this practice of insurance being placed through agents and brokers outside Canada. It was alleged on occasion that the federal Government was losing income tax because they alleged this business was not being reported in Canada and the provinces were losing their premium tax on the premiums. However, our investigations showed that in practically every one of these particular cases that were drawn to our attention the insurance was placed in an authorized company and it was being reported in the Canadian statements of the various companies to us. So the federal Government in our view was not losing corporate tax revenue on the insurance companies' business in Canada nor were the provinces losing any premium taxes. So long as the business is reported in the statements, to the provinces and the Government of Canada here all premium taxes and all corporation income taxes are being paid as far as the insurance companies are concerned.

The Minister of Finance in the statement that I read, made in 1961, intimated that a survey was being made to get further information concerning this matter. The department made two surveys last year, one involving an inquiry to all companies registered with the department; secondly, the department sent a very extensive circular to nearly 200 industrial companies in Canada the names of which had been given to us by the agents and brokers, being companies that they felt they had reason to believe were arranging their Canadian insurance through agents and brokers outside Canada. In other words these 200 industrial companies were all suspect so far as this practice is concerned. It was not a cross-section of industry generally, it

was a list of companies that were suspect. We circularized those industrial companies, got complete details of their insurance arrangements by class of insurance, including the name of the insurer, the amount of the premiums involved, the manner in which it was arranged, the name of the agent or broker, the location of the latter and so on. That survey substantiated our view that the practice complained of arose almost exclusively within authorized insurance companies in Canada. Less than 1 per cent of the premiums paid by these suspect industrial companies were paid to insurers that were not authorized either by the federal Government or by some province to transact business in Canada.

The other survey that I mentioned, which was directed to companies registered with our department, indicated that the volume of business relating to Canadian risks, but arranged by authorized companies through agents or brokers outside of Canada, likewise was not as large, or nearly as large, or anything like the enormous figures that had been mentioned on occasion over the years.

Senator MACDONALD (*Brantford*): What action is taken against these companies which do not report?

Mr. MACGREGOR: I do not feel. Senator Macdonald, that companies are not reporting. All authorized companies to which we sent the circular replied—with one or two minor exceptions, like a small farm mutual company with no connections outside Canada whatsoever.

Senator MACDONALD (*Brantford*): You did not find any general evading of the law for the payment of the tax?

Mr. MACGREGOR: Nothing from those surveys indicated—Well, the survey of these suspect corporations indicated very clearly that the proportion of business placed with unauthorized companies was almost negligible; it was less than 1 per cent.

So the situation seemed to be one where if any action was to be taken by the Government it appeared that it ought to be a taxation measure designed to recoup the Government for whatever loss of tax revenue this practice might involve. About the only major tax revenue loss to the Government through insurance being arranged through agents or brokers outside Canada, rather than in Canada, is the loss of income tax the Government would otherwise collect on the commissions paid to the agents and brokers. To the extent to which this practice prevails, commissions are being paid to agents and brokers outside Canada, and the Government is losing the income tax they would get from the Canadian agents who would otherwise receive those commissions. That is the justification for the amendment that is contained in this bill. In other words, it is designed to recoup the Government for whatever tax loss this practice may involve and, at the same time, it probably will have some effect in discouraging the practice complained of.

Senator THORVALDSON: Mr. MacGregor, I take it the tax loss is minimal because of the facts you have stated, because there is so little of this being placed with unauthorized companies. It is really very small?

The CHAIRMAN: This bill deals with the authorized insurers.

Mr. MACGREGOR: Yes. May I explain that, sir?

Senator THORVALDSON: Yes.

Mr. MACGREGOR: If one looks at clause 1 of Bill C-80, the revised sections, 3 to 7, are briefly for this purpose: The revised section 3 would merely revise the definitions. The substance of the tax is contained in revised section 4, on page 2. I need hardly mention the revised sections 5, 6 and 7, because: the revised section 5 simply relates to tax returns that are required of certain insured persons, of agents and brokers and of insurers; revised section 6 simply

provides that the Department of Insurance may have access to the offices of insurers, brokers or agents, to verify the tax returns under this act; and revised section 7 imposes penalties for the late filing of returns. So, the substance of the matter is found in revised section 4.

Senator MACDONALD (*Brantford*): What page is that?

Mr. MACGREGOR: Page 2. Upon looking at that section one will see two paragraphs, (a) and (b).

Paragraph (a) relates to the existing tax on insurance placed in unauthorized companies, and really involves no change whatsoever. The new proposal is contained in (b), and the effect of this proposed amendment would be to impose a similar tax of 10 per cent on the premiums paid for fire and casualty insurance by any Canadian resident, whether an individual or corporation carrying on business in Canada, where that person places his Canadian fire and casualty insurance through an agent or broker outside Canada, but in an authorized company—an "authorized company" being defined as one authorized under the laws of Canada or of any province of Canada to transact business in this country.

Senator CROLL: That tax, of course, is a new tax of 10 per cent, and none of it was on before?

Mr. MACGREGOR: That is correct.

The CHAIRMAN: And this tax proposed by this bill is on the person who is buying the insurance.

Mr. MACGREGOR: That is correct, as the tax always has been imposed. That is to say, the tax that has been in force since 1922 on insurance placed in unauthorized companies has always been on the insured person. There is no change in that respect whatsoever.

Senator MACDONALD (*Brantford*): This does not apply to a premium placed in an authorized company by a broker or agent outside of Canada?

Mr. MACGREGOR: The existing tax, Senator Macdonald, which is reproduced in paragraph (a), imposed the tax of 10 per cent where the insurance is placed in an unauthorized company, regardless of how it is placed, whether through an agent or broker in Canada or outside of Canada, or no broker or agent at all.

Senator MACDONALD (*Brantford*): Then this is all-inclusive?

Mr. MACGREGOR: Paragraph (a) relates only to insurance placed in unauthorized companies.

Senator MACDONALD (*Brantford*): By agents or brokers outside of Canada?

Mr. MACGREGOR: By a person resident in Canada, regardless of agents anywhere. If I were to insure my house with a British or foreign insurance company that is not authorized under the laws of Canada or some province of Canada to transact business in Canada, paragraph (a), which is the old tax unchanged, would require me to pay a tax to the Government of 10 per cent of the premium I paid to that unauthorized British or foreign insurance company.

Senator MACDONALD (*Brantford*): Whether I place that through an agent or broker inside or outside of Canada?

Mr. MACGREGOR: That would not matter. Even if I placed it directly with the unauthorized British or foreign company, I would be subject to the tax.

The CHAIRMAN: There is no prohibition involved in this proposed bill against any company doing business in a special way in Canada. The condition is that it must be authorized by the laws of Canada or a province of Canada to do business in Canada.

Mr. MACGREGOR: That is correct, sir, and I think it is an important point. In other words, the proposed new tax has nothing to do with any question whether the insurance company is authorized under the laws of Canada or of a province of Canada. There is no distinction made between insurance companies in that respect, and there is no prohibition.

Senator KINLEY: What are the conditions of authorization? What companies can be authorized?

Mr. MACGREGOR: Any British or foreign insurance company, being a corporation, may apply for registration under the Canadian and British Insurance Companies Act or the Foreign Insurance Companies Act, as the case may be.

Senator KINLEY: Anybody can apply under this?

Mr. MACGREGOR: British or foreign companies, if they are financially sound and are willing to make the deposits required by law to be made, and are willing to comply with the other requirements of the Act, may become "authorized" by the laws of Canada.

There are some insurers, Lloyds for example, that do not fall within the scope of federal legislation. Lloyds operate in Canada by virtue of licences granted to them by the provinces alone. There is a significant difference in the status of Lloyds in that respect.

Senator KINLEY: In the old Act, sections 3 to 7, a British company is defined. It says "British company" means any corporation incorporated under the laws of the United Kingdom of Great Britain and Northern Ireland or any British Dominion or possession other than Canada, Newfoundland or a province of Canada, for the purpose of carrying on the business of insurance, and includes any association of persons formed in the said Kingdom or in any such Dominion or possession on the plan known as Lloyds whereby each associate underwriter becomes liable for a stated, limited or proportionate part of the whole amount insured by a policy."

Has that been changed by this?

Mr. MACGREGOR: That is a definition presently in the Excise Tax Act for the purposes of this Act. As you will see, Senator Kinley, it is proposed to repeal that definition, and to replace it by a broader definition of the word "insurer" which would include British companies, foreign companies and others. I may say that the definition of "British Company" in the Canadian and British Insurance Companies Act is not the same as this definition. The definition in the insurance Act makes no reference to Lloyds.

Senator KINLEY: There is a definition in the new Act?

The CHAIRMAN: No.

Senator KINLEY: Is there any significance in Newfoundland coming into Confederation?

Mr. MACGREGOR: The particular reference to Newfoundland arises because of the fact that our insurance and tax laws go back long before 1949 when Newfoundland came into Confederation. Prior to 1949 a company incorporated in Newfoundland was a British company and since 1949 a company incorporated in Newfoundland is a Canadian company. The only reason Newfoundland is mentioned particularly is because of the change of status of Newfoundland in 1949.

Senator GERSHAW: Is there similar legislation in other countries?

Mr. MACGREGOR: I should not like to say with certainty. I understand a federal tax in the United States of America is imposed where insurance is placed in an unauthorized company through an agent or broker outside that country. I have not got the details of it.

Senator MACDONALD (*Brantford*): Would you clarify this matter for me? Supposing I live in Buffalo and I own property in, say, Brantford, and I place my insurance in Buffalo with an unauthorized company, how can you collect the tax?

Mr. MACGREGOR: You are not subject to the tax. You are not a resident of Canada. As I understand your question you are living in Buffalo and you have property in Brantford?

Senator MACDONALD (*Brantford*): Yes.

Mr. MACGREGOR: I would say in those circumstances you are not regarded as a resident of Canada and therefore not subject to the tax at all, because the tax is imposed only on residents of Canada.

Senator MACDONALD (*Brantford*): Not on the property.

The CHAIRMAN: Mr. MacGregor, I don't want to interfere with your presentation, but we have had this question before this Banking and Commerce Committee at a much earlier period, and it almost coincides with the time I came into the Senate, and we did certain things with the bill at that time, and the matter went to the Supreme Court of Canada on a reference. Were you going to touch on that, or make reference to it?

Mr. MACGREGOR: I didn't have in mind doing so but I will if you wish.

The CHAIRMAN: I only mentioned it because we have representatives of the insurance companies here.

Mr. MACGREGOR: May I make this comment. It is true that the predecessor section relating to this tax, when it was contained in the Special War Revenue Act, was the subject of litigation, and it was dealt with both by the Supreme Court of Canada and on one occasion by the Privy Council. May I simply say this, that the first occasion when that section, the old section 16 of the Special War Revenue Act, came into question occurred in 1931. Between 1922 and 1932 the wording of section 16 made a distinction in the application of the tax, whether the British or foreign insurance company was authorized under the laws of Canada or under the laws of a province. The old law which came into question between 1922 and 1932 said that this tax on business placed in British and foreign companies would apply unless the company were authorized under the laws of Canada to transact business in Canada. If a province were to license a British or foreign company that was not licensed under the laws of Canada and a person were to insure his property in that British or foreign company he would be subject to the tax. It was that distinction which formed the basis of the question before the Privy Council which ruled that that section in that form was invalid; and it was for that reason that in the amendments of 1932 the distinction was removed and the wording of the Act, in section 16 of the old Special War Revenue Act, and section 4 as it appears now, makes no distinction in the application of the tax. It says that as long as the British or foreign company is authorized under the laws of Canada or any province of Canada it is all right, and there is no tax. So that the litigation that arose in 1931 is explained largely in that way. Now in 1941—

The CHAIRMAN: Right there and then in 1932 the Special War Revenue Act was amended?

Mr. MACGREGOR: Between 1922 and 1931 the tax on insurance placed in an unauthorized company was 5 per cent. There were amendments made in 1931 that would have raised the tax to 15 per cent instead of 5 per cent, but those amendments in 1931 included a clause that they were not to come into force until proclamation. The reason for that was that this question was then before the Privy Council, and the fact is that following the Privy Council decision in the fall of 1931 those amendments of 1931 were never proclaimed. They were subsequently repealed by new amendments in 1932 which left out the offending

distinction. Of course the Insurance Acts were completely rewritten in 1932 also. Now in 1941 there was a proposal made to amend the same section 16 to restore the distinction that had been removed in 1932; and the amendments of 1941 that would have restored that distinction between companies authorized under the laws of Canada and those authorized under the laws of a province went on to say that such amendments could not come into effect until proclaimed by the Governor in Council, and the Governor in Council could not proclaim them until their constitutionality was decided by the Supreme Court of Canada.

The CHAIRMAN: That was a Senate amendment.

Mr. MACGREGOR: The Supreme Court of Canada said in 1942 the same as the Privy Council had said in 1931, that it was an improper distinction, and so the amendment was never made.

Briefly, the position now is the same as it has been since 1932. In dealing with the question whether a British or foreign insurance company is authorized to do business in Canada, the tax law simply says if the British or foreign insurance company is authorized under the laws of Canada or under the laws of a province of Canada that is enough to escape the tax.

In conclusion, honourable senators, I can only say that this is a rather complicated matter with quite a history. There are many facets which I have not touched upon or gone into. I believe I have mentioned all of the relevant or important features, but if there are any questions honourable senators would like to ask me then I would be only too glad to endeavour to answer them.

Senator LEONARD: I would like to know the size of the problem with which we are dealing. How much tax have we been getting on the premiums paid to unauthorized insurers? While I know you cannot tell what the amount of tax will be as a result of the change, because, conceivably, if it operates it might result in there being no tax payable by reason of the fact that the business would be directed towards resident brokers and agents, what would be the volume of premiums now affected by this kind of tax? Also, I would be interested to know what country or what several countries might be chiefly involved with respect to the residence of the brokers or agents outside of Canada to which the business has been going.

Mr. MACGREGOR: In answer to your first question, Senator Leonard, as to the volume of tax presently being collected on insurance placed in unauthorized companies, which is the only tax presently in force, the amount collected in the fiscal year 1961-62 was about \$48,000.

Senator LEONARD: That is tax?

Mr. MACGREGOR: Yes, that is tax. I will interject one comment to the effect that I believe the Department has policed that kind of business very carefully. We have never felt that much, if any, escapes. We have felt that way because continually when new suspect cases have been brought to our attention by agents or company managers, or otherwise, we have found upon investigation by writing to the insured person that the insurance is placed with an authorized company and not with an unauthorized company.

Senator LEONARD: From a revenue standpoint, therefore, the amount of tax has been comparatively small; it has been almost negligible?

Mr. MACGREGOR: Yes.

Senator LEONARD: What about the volume of business that would be affected by the new tax?

Mr. MACGREGOR: May I simply say, first, that the survey we made of this list of nearly 200 suspect companies indicated that about two-thirds of one per cent of all the premiums paid by all these corporations was to unauthorized insurers; that practically all of it was with authorized companies.

The survey we made of authorized insurance companies—and the only qualification I make there is that our survey was directed only to insurance companies authorized by federal laws, that is by our department; we did not canvass the provincially incorporated companies or Lloyds—indicated that about \$7 million of premiums would be subject to this proposed tax.

Senator LEONARD: Presumably all of that \$7 million went through brokers outside of Canada.

Mr. MACGREGOR: All of the \$7 million was arranged through agents or brokers outside Canada, and the commissions amounted to about \$900,000—less than \$1 million.

Senator LEONARD: This new tax, if that business still stays with the outside brokers, would be 10 per cent on \$900 thousand?

Mr. MACGREGOR: No, 10 per cent on the premiums.

The CHAIRMAN: The tax is on the premiums.

Senator LEONARD: It would be \$90,000?

Mr. MACGREGOR: No, the volume of premiums is a little less than \$7 million. These are premiums received by authorized insurance companies covering insurance on Canadian risks placed through agents or brokers outside of Canada. If there were no change in the practice at all the tax would be about 10 per cent of that, or \$700,000.

Senator CROLL: Would you try to give us a knowledgeable guess at how much more would be involved at the provincial level?

Mr. MACGREGOR: 90 per cent of the fire and casualty business in Canada is written by companies that are federally registered. The other 10 per cent is in provincially incorporated companies or—

Senator CROLL: So it would not be unreasonable to carry forward that 10 per cent, as a fair guess?

The CHAIRMAN: In the \$700,000?

Mr. MACGREGOR: I think we have more than 90 per cent of it included there because it is the federally authorized companies that have connections outside of Canada to a far greater extent than the provincially incorporated companies.

Senator CROLL: Lloyds do a great deal of business outside of Canada.

The CHAIRMAN: They would be in the 10 per cent.

Mr. MACGREGOR: In the survey made of these suspect corporations—of course, they reported their insurance whether it is placed with Lloyds or a provincial company, or with an authorized or an unauthorized company, or wherever it is placed—the total premiums reported by all of these suspect corporations amounted to \$3,300,000, and of that total \$3,200,000 was with federally registered companies. However, I have the figures for Lloyds separately, if desired; they were quite small.

Senator KINLEY: Does that include re-insurance?

Mr. MACGREGOR: No, only direct written insurance. The tax does not apply to re-insurance.

Senator MACDONALD (Brantford): So the tax likely to be received under the amending bill amounts to what?

Mr. MACGREGOR: \$700,000 if the proposed amendment has no effect on present practice, and, secondly, if we get all of this business ferreted out as reported by the authorized companies.

Senator CROLL: \$700,000 if it has no effect on the practice?

The CHAIRMAN: That is if they write the insurance with Canadian brokers instead of foreign brokers.

Senator CROLL: And one reason you gave for that was that it was easier for the head office of a company, and you also mentioned the fact that the premiums were a reason?

Mr. MACGREGOR: I think the roots of the practice lie in these considerations, Senator Croll. First, in recent years there has been an increasing tendency for foreign organizations to gain control of Canadian industry, and in so doing they wrap up their Canadian insurance requirements with their requirements at home. Secondly, there is the fact that by buying insurance on a bulk basis at home they are able to get a better rate. In fact, the trend in fire and casualty insurance in recent years has been to combine many classes in one policy with broader and broader coverage.

For example, it used to be that you might have only a fire policy on your house, but now you may get a comprehensive dwelling policy including liability insurance as well as other coverage, and if you take out a policy of that kind you may get a 10 per cent reduction on the aggregate of the premiums that would otherwise be charged.

Senator Leonard asked me—

Senator LEONARD: Yes, I asked a second question. That was as to the countries chiefly involved in this change—that is to say, the residence of the brokers or agents outside Canada.

Mr. MACGREGOR: For all practical purposes they are agents and brokers in the U.S.A., and, of course, the insurance that is so arranged is in very large measure placed with U.S. insurance companies that are authorized here. The proportion of business that is arranged in this way and placed in British companies is very, very much smaller than that placed in foreign companies mainly in the United States, and the proportion placed in Canadian insurance companies is very much smaller again. If one looks at Canadian insurance companies controlled in Canada the matter may be ignored.

There is only one Canadian insurance company controlled in Canada that has reported any of this business, and it reported one fire policy only and two auto policies—I am speaking from memory. The one Canadian controlled insurance company registered with us that reported any business of this kind at all wrote one fire policy involving a premium of \$108, and two policies covering other kinds of casualty insurance involving premiums of \$60.

Senator LEONARD: In so far as the United States is concerned, in answer to Senator Burchill, you stated that you had some knowledge as to whether there was a federal tax on premiums paid—

Mr. MACGREGOR: Subject to correction, yes. I understand there is a federal tax of 4 per cent placed upon insurance in unauthorized companies arranged through an agent or broker outside the U.S.A. However, I speak subject to correction.

It may be fair to say that perhaps there is no counterpart in other countries to the situation that exists in Canada with respect to foreign ownership of industry in Canada. Therefore, I do not think that many, if any, other countries have a similar problem to contend with, where Canadian insurance agents and brokers are arranging much insurance covering property and so on in the United States or elsewhere.

Senator HUGESSEN: I understood that as a result of your survey you felt that the amount of tax which would be levied under this proposed new tariff, the paragraph (b), assuming that there is no change in agent, would be of the order of \$700,000.

Mr. MACGREGOR: Yes.

Senator HUGESSEN: I understand that in the House of Commons the assistant to the Minister of Finance said that the Government's anticipation

there was that there would be little or no revenue received under paragraph (b), but that the real object of it was to change the business from the foreign broker to the native Canadian broker. Is that really the reason for this legislation?

Mr. MACGREGOR: I think the justification for a tax of this kind—

Senator HUGESSEN: To switch the business?

Mr. MACGREGOR: Well, I prefer to deal with it as a tax to the Government to offset a loss of revenue, however small it may be; if it has the subsidiary or side effect of discouraging the present practice that is all to the good; but I personally would not like to describe it as a tax designed to produce, or to put the emphasis on, a change in practice in arranging insurance. I think it is probably the hope of Canadian agents and brokers that it will have that effect.

Senator HUGESSEN: That is what the assistant to the minister said it was designed to do.

Senator LEONARD: The Government will recoup itself to some extent, namely, the tax on \$7 million in premiums, as appropriated for agents in Canada.

Mr. MACGREGOR: That is the tax revenue in lieu of income tax on commissions paid by the insurance companies to foreign agents and brokers.

Senator BOUFFARD: How much money will it cost the Government, in addition to what they are spending now?

Mr. MACGREGOR: It certainly does not cost much money to administer the tax relating to unauthorized companies. Since all the evidence indicates that this practice involves authorized companies almost exclusively, that is the group the tax is directed at.

Revised section 5 dealing with returns calls upon the authorized insurance companies arranging business, or that have business, covering Canadian risks arranged through agents and brokers outside Canada, to report the details of this business, giving the name of the insured person, and so on. Therefore, to that extent the cost will fall on the authorized insurance companies to produce a lot of the information, or most of the information, relating to this business. Then it would be the responsibility of the department to use that information, together with other information that it has access to, and to write sending a form to the insured person for the purpose of collecting the tax. The later part of it does not involve much expense so far as the Government is concerned; it would be a form letter, plus—

Senator BOUFFARD: What kind of expense would it cost the company to make the new report that they will have to make?

Mr. MACGREGOR: I should not like to say, Senator Bouffard, how much it will cost them. It will probably cost more at first, when they are not completely organized to produce the information. Like everything else, once they adapt their practices and their bookkeeping, knowing they have to furnish this information, it will cost them considerably less.

Senator CROLL: Following the question just asked—and I had not noticed that reference to the assistant to the minister—I find it a little difficult to understand how a premium of \$7 million and an income—

The CHAIRMAN: A premium tax.

Senator CROLL: —\$7 million premium, that is what Mr. MacGregor said, and ten per cent of that is \$700,000—will not produce considerable revenue to this country. That was the suggestion made by the assistant to the minister.

Mr. MACGREGOR: It is a matter of opinion I suppose, sir, as to what is substantial revenue and what the effect of the amendment, if made, will be upon the practice.

Senator CROLL: No one can foretell that.

Mr. MACGREGOR: That is right.

Senator CROLL: So what you have here is \$7 million, ten per cent, \$700,000, coming in as revenue to some people in this country upon which we impose a tax.

The CHAIRMAN: No, the \$700,000—if we get \$700,000 in tax, it will be because brokers outside of Canada have got these commissions, so we are not getting that \$700,000 of tax in Canada.

Senator CROLL: That is right.

The CHAIRMAN: If they switch to Canadian brokers, the \$700,000 will be income subject to income tax.

Senator CROLL: That is exactly my point, that with the switch it comes into this country and to that extent, whatever extent, it becomes revenue, income for tax purposes.

Mr. MACGREGOR: That is right.

Senator CROLL: So in effect, whereas we cannot nail it down, it is a vital bit of the taxation revenue of this country, an item as big as that.

The CHAIRMAN: That was in the form of a question.

Mr. MACGREGOR: I thought, Mr. Chairman, that you had answered it.

Senator CROLL: If it does not make sense, it is no good. It was not a speech.

The CHAIRMAN: It was a rhetorical question.

Senator CROLL: Nevertheless I wanted Mr. MacGregor to agree or disagree with it.

Mr. MACGREGOR: I am sorry, sir, towards the end I thought the chairman had answered your question. I may have missed your points or even the substance of your main point. However, it is true that the premiums arranged through agents or brokers outside Canada comes to \$7,000,000 and the tax, if imposed, will bring in revenue up to \$700,000. If there is a change in the practice in arranging insurance, then the commissions going now to agents and brokers outside Canada, from which the Government presently raises no tax whatever, will presumably go to insurance agents and brokers here who will be required to pay income tax.

Senator VIEN: It must be difficult to expect that large parent companies in the United States would change their basic arrangements with respect to insurance paid for their Canadian subsidiaries. Therefore if the parent companies in the United States continue it would produce Canadian revenue on the Canadian insurance paid by arrangement to foreign brokers. It is difficult to appreciate what effect this tax may have in the system of parent companies in foreign countries.

Mr. MACGREGOR: I think it is very difficult to forecast it, Senator Vien, and I may say we in the department are under no illusions about the problems involved in a tax of this kind. There are difficulties in defining the areas, the classes, the circumstances. We know that. Furthermore, in answer to Senator Bouffard about the expense involved, any question of expense would disappear if the practice were to change so that the business would be arranged through Canadian agents and brokers.

One may ask, as respects the present practice of insuring in this way through foreign agents or brokers, why the authorized companies themselves do not change the practice, if there is expense put upon them to supply the

information, or if they have complaints from their insured persons about having to pay a tax. In an over-simplified way, one might suggest that the authorized insurance company should say to its agent or broker outside Canada:

We cannot take the business any longer from you, we will have to get it from an agent or broker in Canada.

That sounds simple, but—

Senator BOUFFARD: Who has got to pay the tax?

Mr. MACGREGOR: The insured person.

Senator BOUFFARD: Therefore, if an American subsidiary company has to pay an additional amount for premiums, supposing that they do not change their practice, if they have to pay ten per cent more for premiums, that means that in their report of income tax the department is going to lose 50 per cent of that, because it is going to be taxable. It may mean a change up to about \$350,000.

Mr. MACGREGOR: I should like to finish the point I was making. One might ask these insurance companies, if there is any complaint about burden or trouble or expense to them, why they do not say to the brokers and agents outside Canada: "we cannot take it from you, we have to take it from a Canadian source." Their fear is that the agent or broker outside Canada will say: "That is fine, if you do not want the business, we will place it with some other company." In justice to the companies, it is not so easy for them to solve this problem which involves a practice of their own in accepting Canadian insurance through agents or brokers outside Canada.

Senator VIEN: The Standard Oil Company, for instance, will not change its system of insurance on the Imperial Oil Company in Canada, just because of the incidence of this tax. Because, as Senator Bouffard pointed out, the amount they pay under this provision would be deductible from their income tax in the United States and would reduce it to half the amount. Therefore, it is most likely that the large parent companies in the United States would not be induced to change their basic rates with respect to insurance.

Mr. MACGREGOR: I believe that is so.

Senator DROUIN: You made certain references to the Privy Council. As I understand it, the old section 16 was submitted to the court of reference and it went as far as the Privy Council, and the Privy Council declared that clause invalid and it was removed; it was reinstated, and there was a further reference to the Supreme Court, was there not?

Mr. MACGREGOR: That is so.

Senator DROUIN: Was not that second reference on the same subject matter, and if so, this second reference to the Supreme Court would have constituted almost an appeal from the decision already rendered by the Privy Council?

Mr. MACGREGOR: It might appear that way, Senator Drouin; but may I say first that the reference which went to the Privy Council in 1931 involved not only section 16 of the S.W.R. Act, but also certain licencing provisions of the 1917 Insurance Act, whereas in 1941 when the reference was made to the Supreme Court the licencing provisions of the Insurance Act had been altered in 1932 following the Privy Council decision. In fact, the whole insurance act had been re-written so that the Insurance Act aspect, so to speak, was different in 1941 as compared with the situation the Privy Council dealt with in 1931.

The CHAIRMAN: I understand that leave of appeal from the decision of the Supreme Court of Canada in 1942 was sought and was refused by the Privy Council.

Senator DROUIN: When did they abolish appeals to the Privy Council?

The CHAIRMAN: Not until 1949, and appeals that were pending still went on until 1952 or 1953.

Senator HIGGINS: If I were to insure property with an insurance company in the United States which had no branch in Canada, what check would you have on that transaction?

Mr. MACGREGOR: If you were a resident of Canada?

Senator HIGGINS: Yes. What check would you have on the transaction?

Mr. MACGREGOR: Unless it was arranged through an agent or broker in Canada, it would be very difficult to ferret out that kind of case—the case of a small individual.

Senator KINLEY: Mr. Chairman, may I be permitted to make a few remarks? I suppose legislation of this kind is always introduced with a dual purpose in mind. I am not questioning that, but there is a feature which particularly concerns me as an industrialist. I refer to marine insurance. I take it, Mr. MacGregor, that marine insurance is exempted under the Insurance Act of Canada?

Mr. MACGREGOR: It always has been.

Senator KINLEY: Therefore it seems to me that that creates a monopoly today. I do not know anyone in Canada who is seriously in the marine business. It would be difficult to get a policy in Canada, that is, a marine insurance policy for a large amount. In my business, I find most of the insurance that I take is re-insurance anyway. In order to get a policy issued in Canada, the insurance agent will usually issue a British policy. The British are very able and know the insurance business well. My complaint is one that I think affects the industry generally in Canada. When a man suffers a loss and wants to be re-established, it is in the interest of both himself and his company to re-establish as quickly as possible. I find that delays are bad; I have known delays of over a year sometimes before the claim is approved. Now, some years ago an amendment to the Insurance Act was passed by Parliament that if a claim was subsequently proved good, interest on the claim was payable. In my opinion, that should also apply to marine insurance, especially because it is foreign insurance to the extent of almost 100 per cent, and because the insurance is contracted from outside the Insurance Act of Canada. As I read my policy it says that five days after the approval of the claim we agree to pay. That is the provision by Lloyds, and theirs is the largest company. It is a good company, and I am not complaining about them. However, it seems to me that if afterwards litigation is entered into or if by arrangement in a year or two a claim is good, they should be liable for interest. In a million dollar claim, I can go to the bank and it will give me credit, but I have to pay interest on \$1 million which is a lot of money for a small industry in Canada. After all, we are supposed to be trying in every way to promote industry and to help people financially, and we should see that the man in business in a small way is protected. I do not want to interfere with a Government bill, but I want to get it across to the powers-that-be that there should be a liability, an interest liability, on these claims. It may be that nobody in Canada is going into the marine insurance business because other people have privileges outside which we in Canada do not enjoy. For that reason I think it is eminently in the interest of Canada that there should be a clause inserted in the act that interest must be considered on accounts of this kind when they are unduly delayed.

Mr. MACGREGOR: May I simply say briefly, in reference to that matter, Senator Kinley, that in my opinion that would be a matter solely for provincial legislation. It is a matter involving your contract in the province. I do not think it would be competent for Parliament to deal with it.

The CHAIRMAN: No; this is a tax bill.

Senator KINLEY: I did not follow what Mr. MacGregor said. Did he say that the province would interfere with any legislation of that kind?

The CHAIRMAN: No. He said that the matter you raised was a matter for the province to deal with; it was a matter of contract. This is a taxation act and excludes marine insurance.

Senator KINLEY: Why should it be excluded from the insurance liabilities in Canada?

Mr. MACGREGOR: That is a very broad subject, Senator Kinley. Marine insurance has been exempted from the insurance acts of Canada, as you know, from the very beginning in 1868; but a similar exemption was granted almost the world over, as in the United States, for many years the same as here. One reason was that marine insurance in the earlier days was looked upon as essentially an international business on the high seas beyond the jurisdiction, or the complete jurisdiction, of any one country at one end of it. There are many reasons. Secondly, marine insurance in those early days was taken out largely by people of means who were presumed able to look after their own interests. They were substantial people with many facilities open to them to investigate the marine insurance company they were insuring in. Another reason was pressed that if marine business were subjected to the insurance legislation it would drive what little there was in the country out; there would be no facilities. There are many reasons, but it is a question of long-standing and almost, one might say, of vested interest that has continued right up to date.

Senator KINLEY: Thank you. I think what you say is right; but it seems to me that since we have the power to give people the privilege of taking out marine insurance in Canada, then surely under the Insurance Act we should be able to control the marine insurance business to the extent that they look after their business properly, whether under provincial legislation or not. I do not see why we could not have an amendment to our act here including liability for interest in cases of undue delay. Why not?

The CHAIRMAN: We have no power to do that.

Senator DROUIN: Under the constitution it is a provincial jurisdiction.

The CHAIRMAN: I wanted to make this statement to the committee that we have representatives of the All Canada Insurance Federation here to make submissions in relation to the sections of the act which Mr. MacGregor has been talking about. There are also some other sections in the bill that deal with other items on excise tax. Would honourable senators prefer to hear from the representatives now, or to have Mr. Gorman speak on the other sections?

Senator CROLL: I think we might hear from the representatives now.

The CHAIRMAN: Very well. Mr. MacTavish is here, and Mr. Piper is with him. Will the one who is to be the spokesman kindly come forward?

Mr. Duncan K. MacTavish, Q.C., Counsel for All Canada Insurance Federation: Mr. Chairman and honourable senators, Mr. Piper and I appear with the request that we may be heard on really the narrow point, what might be described the constitutional point involved in what is before the committee and in what Mr. MacGregor has said.

I beg leave, Mr. Chairman, to circulate a two-and-a-half page memorandum of the representations that Mr. Piper and I hope to make. I should say right at the commencement that Mr. Piper will discuss in detail this constitutional problem. It is one that he is very familiar with and has lived with for many years. The point briefly is that these companies take the liberty of asking to place their representations before you honourable senators today because they

feel that if this tax is of questionable validity this point should be settled before the industry is disturbed and confused by rather difficult provisions that you will see in section 5 of the bill in respect of collection of the tax.

Mr. MacGregor himself referred to this, stating that it will involve substantial changes in their bookkeeping system. As most of you honourable senators are aware, bookkeeping systems now are largely mechanical, very expensive and difficult to alter in a substantial way. So, in effect, the industry is simply asking that it be made absolutely and abundantly clear that the tax to be imposed by this legislation is a good tax and a valid one. Then, of course, obviously they will submit to it.

Senator MACDONALD (Brantford): Good, constitutionally?

Mr. MACTAVISH: Good constitutionally, yes. If, on the other hand, there is a question as to its validity we feel that that question should be solved beyond peradventure by the committee before the companies are put to the expense and confusion of making these changes. As I said, Mr. Piper will deal with this feature.

I think it is interesting to observe, as you will note from the memorandum before you, that the wording at the top of page 2, quoted from Lord Dunedin's judgment in the 1916 case, *Attorney-General for Canada v. Attorney-General for Alberta*, to which Mr. MacGregor referred, is very similar to the wording used by the parliamentary assistant to the Minister of Finance in the House of Commons on November 19. Mr. Grafftey then said: "As was stated by the former minister of finance during the budget speech"—that was Mr. Fleming's speech on the budget of 1961—"the purpose of the proposal is to discourage the placing of insurance with non-resident agents, in many cases in the United States". And he indicated that it was said that the tax was not very substantial.

You will observe that Lord Dunedin in 1932 said ". . . under the guise of legislation as to aliens they seek to intermeddle with the conduct of insurance business, a business which by the first branch of the 1916 case has been declared to be exclusively subject to provincial law".

So it would seem that the thing that is suggested is very close to the thing that was found to be improper by the Privy Council in respect to the matter referred to by Lord Dunedin and found again to be *ultra vires* by the Supreme Court of Canada in 1942.

So, honourable senators, I ask leave to file this memorandum.

(For text of memorandum see appendix.)

Senator MACDONALD (Brantford): I recall that in connection with certain resolutions presented on the budget night that some of the taxes come into effect forthwith, before the legislation. Could you say whether or not the taxation in this bill is now in effect.

Mr. MACTAVISH: My opinion, and all it is is an opinion, is that it is not yet in effect because I do not believe that was one of the sections of the budget—you are referring of course to the last section which refers to April 11, 1962?

Senator MACDONALD (Brantford): Yes, it says here "Shall be deemed to come into effect on April 11, 1962."

Senator LEONARD: That has no reference to the resolution we are dealing with.

Mr. MACTAVISH: If you will refer to the immediately preceding subsection—Mr. Piper has drawn my attention to it—it is applicable in respect of any contract of insurance, the portion we are discussing, entered into or renewed after December 31, 1962. So it will be in effect at the end of the taxation year.

Mr. Chairman, if it is agreeable, I will now ask the committee to hear Mr. Piper who will be much better able than I am to answer detailed questions.

Senator LEONARD: Apart from this constitutional question the bill is all right, in the opinion of your federation?

Mr. MAC TAVISH: Yes, as right as any bill that imposes a tax is.

The CHAIRMAN: We will now hear from Mr. Piper.

Mr. E. H. S. Piper, Q.C. Manager and General Counsel of all Canada Insurance Federation: Mr. Chairman, and honourable senators, Mr. MacTavish possibly gave you an incorrect answer to the last question because in the opinion of our federation this bill is all wrong. With all due respect, we attempted, as soon as the budget resolution was brought down, to prepare a memorandum on the subject for submission to the Minister of Finance. This was discontinued of course, when Parliament was dissolved. After the elections had been held and a new Minister of Finance had been appointed we approached him at once and requested an opportunity to discuss with him the implementation of excise tax budget resolution number eight, I believe it was, if he saw fit to incorporate that resolution in such budget as he might bring down. We tried on numerous occasions to get together with the honourable Minister of Finance and we were under the impression that a meeting would be held because certainly one of the important points we wished to bring to his attention was the constitutional issue and also ways and means whereby revenue could be derived by Canada other than by the method proposed here.

Senator DROUIN: Did you send a memorandum to the minister?

Mr. PIPER: No, we wrote him first of all. We felt the best way to do it would be to sit around the table and go over the question, indicating to him the particular problems faced by the insurance industry in complying with whatever legislation might be brought down. We had no quarrel with the resolution *per se*. We requested an opportunity to appear and be heard with respect to such legislation as might be drafted to implement that resolution.

Senator DROUIN: But you mentioned that you started to prepare a memorandum or brief but on the dissolution of both Houses of Parliament it was discontinued.

Mr. PIPER: It was prepared. It would have been the subject matter for discussion if the meeting had been held.

Senator DROUIN: But it was not sent to him?

Mr. PIPER: No, not in advance.

Senator ISNOR: You did make representations to the present Minister of Finance for a hearing and that was declined?

The CHAIRMAN: It did not happen.

Senator ISNOR: I just wanted to get that clear.

Mr. PIPER: When we saw that the budget resolutions of last April were being re-introduced we again attempted to approach the Minister of Finance, but the first thing we knew was that on November 12 the bill received first reading in the House of Commons. We received a copy of the bill implementing this budget resolution on Thursday of that week. On Monday it received second reading and was passed through the Ways and Means Committee of the House of Commons, and I must say that we were a little disturbed to read in *Hansard* that there had been ample time for insurance interests to make their representations, when actually we only received the bill on Thursday and it had second reading and went through the Ways and Means Committee the following Monday.

Senator CROLL: Did you make representations to his deputy?

Mr. PIPER: No. We had made representations first through Mr. MacGregor, and we received a reply directly from the Minister of Finance. From there on in the discussions and the correspondence were directly between the Minister of Finance and myself.

Senator CROLL: But this memorandum, or a similar one to it, did come to the attention of Mr. MacGregor at some time previous to the introduction of the bill in the house?

Mr. PIPER: No, the first communication to Mr. MacGregor was a letter, and I believe I called on him early in May, but nothing in writing was left with him other than to indicate we were interested in whatever legislation might be provided to implement the budget resolution.

Senator CROLL: But you discussed something with Mr. MacGregor?

Mr. PIPER: This was brought up, and we also suggested other ways and means whereby the same objective could be achieved.

Senator CROLL: But the Government has the responsibility. They make up their minds as to how they achieve objectives. Mr. MacGregor told us something about the background this morning. When you saw Mr. MacGregor you undoubtedly brought to his attention what was in your mind, and what is contained in this memorandum, and you said to him: "You know what they are attempting to do is unconstitutional"—or words to that effect? It was discussed?

Mr. PIPER: Yes, it was mentioned.

Senator DROUIN: On several occasions?

Senator CROLL: What else would be mentioned?

Mr. MACGREGOR: May I have the privilege of speaking to that, Mr. Chairman?

The CHAIRMAN: Yes, Mr. MacGregor?

Mr. MACGREGOR: As far as any contact I have had since May with the All Canada over this matter is concerned, I have all the memos, letters, and so on, with me. However, I would merely like to clarify one point. So far as the constitutional question is concerned, I never heard a single word on it until Mr. Piper phoned me on Monday evening, being the night before last, saying that the All Canada intended to appear before this committee and raise the constitutionality of this proposed amendment. That is the first word on it I have ever heard.

The CHAIRMAN: Well, we have it here now, and if there are some representations to be made, I think the simplest way would be to hear them.

Senator ASELTINE: Mr. Chairman, I have the Vice-Chairman of the Farm Credit Corporation here, waiting for the hearing of the other bill. I wonder how long this is going to take, and whether we should keep him here any longer. Could we sit at 2 o'clock?

Senator DROUIN: That is not worthwhile.

The CHAIRMAN: If the committee concurs, I am going to suggest that if we have not finished this bill by a quarter-to-one we resume at 2 o'clock. Then, if we do not finish by 3 o'clock we can resume when the Senate rises. I do not think I can help the vice-chairman any more than that.

Would you proceed, Mr. Piper?

Mr. PIPER: Mr. Chairman, our primary interest was to get legislation under which we could operate efficiently and economically. Once it had been passed by the House of Commons we felt there was only one way to deal with this legislation, and that was to bring to the attention of this committee the constitutional issue involved.

The CHAIRMAN: Is this the point you are raising before us now?

Mr. PIPER: Yes. I would prefer this morning not to deal with the merits of the bill, but simply to deal with the constitutional issue.

Senator WOODROW: You raise a point in paragraph 4.

The CHAIRMAN: This is why I am boxing it in. At this stage we are being asked to look at the constitutional aspect.

Mr. PIPER: This is mentioned here, but quite frankly I would be happy to let it rest completely on the constitutional issue.

The CHAIRMAN: Right.

Mr. PIPER: I think that over the years the Privy Council and the Supreme Court of Canada have held that the business of insurance is exclusively within the control of the provinces of Canada. The companies have complied with the Canadian, British and foreign insurance companies acts. There has been no dissatisfaction of any sort in their operation, but the Special Revenue Act, and now the Excise Tax Act, have been the object of litigation in the past, and, I believe, will be the object of litigation in the future.

Senator MACDONALD (*Brantford*): If you substantiate your argument with respect to the unconstitutionality of this bill, would that mean that the present act, as it stands, is also unconstitutional?

Mr. PIPER: Well, I am only interested in section 4(1)(b) of the proposed amendment, which deals with the requirement that an insurer authorized to do business in Canada insuring a resident of Canada, but who receives the business from a broker or agent outside Canada, shall be required to file a return with the Department of Insurance, and that the resident of Canada is then subject to the tax.

A resident of the province of Quebec can buy insurance from a company licensed to do business in the province of Quebec through an agent licensed by the province of Quebec who is not necessarily a resident of Canada.

Senator MACDONALD (*Brantford*): It seems to me that if you are attacking that section, you are also attacking the present act.

Mr. PIPER: Section 4(1) is also in conflict with provincial laws. It is against the provincial laws to do business with a company that is not licensed in the province.

Senator CROLL: May I ask you one question? Perhaps this will clear the air. Are you suggesting for a moment that we, sitting around in here as a committee of laymen and some professional men, are competent to deal with the constitutionality of this bill?

Senator DROUIN: Sure.

Mr. PIPER: What I am suggesting is that there is sufficient doubt as to the validity of this legislation to warrant an amendment to this act such as was made in 1941—namely, that it be referred to the Supreme Court of Canada for a ruling as to its constitutionality before it is brought into force.

Senator CROLL: Do you know this bill has been vetted by the Department of Justice? It is common knowledge that every bill that comes before the House of Commons is vetted by that department first.

The CHAIRMAN: Of course, the bill in 1941 was also vetted by the Department of Justice, and they gave their opinion here that it was constitutional.

Senator CROLL: That is my point. There are courts in this country, and this Banking and Commerce committee is not one of them. The Divorce committee of the Senate is a court, but this committee is not. I am not competent to, nor ought I be asked to pass upon the constitutionality of a bill. I may doubt it and I may not agree with it, but I should not be asked to pass upon the constitutionality of it.

The CHAIRMAN: You are misunderstanding what the witness is attempting to say. I am not defending his point on constitutionality, but what he is trying to say is that in 1941, when we had something of this kind raised, the issue of constitutionality came up before the Senate committee. In the course of the hearings Mr. Varcoe and one other witness were called from the Department of Justice, and they expressed the opinion that the bill was constitutional. Notwithstanding that, the Senate put a provision in the bill that the legislation should only come into force on proclamation, and that before its proclamation the matter of its constitutionality should be referred to the Supreme Court of Canada. That was done, and the Supreme Court of Canada declared that the particular section of the bill that was in question was *ultra vires*, and that was the end of it.

Senator DROUIN: Mr. Piper is merely proposing the same procedure in the case of this bill.

The CHAIRMAN: And Mr. Piper is proposing the same procedure. That is my understanding.

Senator LEONARD: Could we hear from him then?

The CHAIRMAN: Yes.

Mr. PIPER: What I was about to say earlier was that the Privy Council and Supreme Court decisions of the past have been unanimous that the business of insurance is to be governed by the provinces, and that the federal authorities have no right to inter-meddle in the conduct of insurance under the guise of taxation.

What I was about to say earlier was that, as this law is presently drafted, a contract may be entered into in the provinces of Ontario or Quebec which is perfectly legal and valid under the laws of the provinces of Ontario and Quebec, and yet the Government of Canada proposes to tax residents of Canada because they have done business validly according to the laws of Ontario and Quebec. With all due respect, I suggest that such an infringement of the laws of the provinces will certainly give rise to a constitutional issue raised by the provinces, if, as and when this legislation is enacted.

Our proposal is simply that rather than have this law enacted and have us comply with the additional expense required under its terms as to reporting details, changing accounting systems, and so on, before we are put to this additional expense, certainly the question of constitutionality should be very closely examined. If the Law Clerk of the Senate or law officers of the Department of Justice, having been apprised of the constitutionality issue, are prepared to give opinions as to its constitutionality, then the setup can be governed accordingly. But in the honest opinion of myself and of counsel this legislation infringes on the rights of the provinces, and if challenged by a province will certainly lead to litigation which can result in the same decision as was reached in 1942. Now, to avoid the expense and the disturbance and the uncertainty, I am requesting that the Senate Committee on Banking and Commerce give serious consideration to an amendment to this bill such as was made to the bill amending the Special War Revenue Act in 1941, namely the condition that it shall only come into full force and effect on proclamation, after it has been referred to the Supreme Court of Canada for a judgment as to its constitutionality.

The CHAIRMAN: Could we interrupt for a moment. The one thing that bothers me about what you are saying is that this bill starts off and applies only to the case where you have agents outside Canada who are selling insurance, and premiums are being paid to insurance agents that are authorized to do business in Canada and by the laws of Canada or by the law of any province. In those circumstances do you still stay that the problem of constitutionality involved here would be at all like the problem in 1941?

Mr. PIPER: The same principle is involved.

The CHAIRMAN: And you also had involved in that reference in 1941 some questions under the Canadian and British Insurance Companies Act, and some prohibitions that were part of the judgment, and did not the court say that they had to look at section 16 of the Special War Revenue Act as being sort of lumped all together, that the whole package had to be considered, and if the one prohibition provision fell then section 16 had to fall too? Is that not what they said?

Mr. PIPER: That is what they said, but what they said in effect was if something was done validly provincially it cannot be interfered with federally.

The CHAIRMAN: This does not interfere.

Mr. PIPER: This will interfere with a resident of Canada who has entered into a valid contract, under provincial law, with a person authorized by the provincial law.

The CHAIRMAN: This doesn't say such a contract is invalid.

Mr. PIPER: The law in those days didn't say it was invalid. It simply imposed a tax as this bill does.

The CHAIRMAN: You also had provision in the Act which says —

Senator LEONARD: What Mr. Piper is saying is that in the guise of being a tax or imposing a tax this is to prevent placing of insurance with a broker or agent not resident in Canada —

Mr. PIPER: I would say the Insurance Act of 1931 decision was held to guide the validity of section 16 of the Special War Revenue Act and is identical to today's law. There has been no change at all in the law in that regard.

Senator BOUFFARD: Does this apply where the company had been authorized to do business in Canada by a province?

Mr. PIPER: This is what I have been told. I am not sure, but the proper information could be obtained. I understand, for instance, that Trans-Canada Air Lines obtains its aviation insurance through a non-resident broker, who is a specialist in aviation insurance. I know of one other air line which buys its insurance through a licensed agent in the province of Quebec but who resides in Pennsylvania. The point is that in most of the industrial and mercantile fields the policies are mostly drafted by brokers and agents who are specialists in a given field. There is nothing in the law of the provinces which precludes business being placed in that province by a non-resident who holds a non-resident agency or broker and there are some provinces which put in the provision that some part of the commission must be paid to a local resident agent who must countersign the policy, but there is nothing to preclude a policy being issued through a non-resident intermediary in any province of Canada.

Senator BOUFFARD: This legislation would try to prevent or interfere between say, a resident of Quebec and a duly authorized agent or broker in Quebec and would try to prevent such a contract unless the tax is paid.

Mr. PIPER: It imposes a federal tax on the Quebec resident in dealing with a licensed company in Quebec.

Senator BOUFFARD: That is the pith and substance of the Act?

Mr. PIPER: The pith and substance of the Act is less to obtain revenue than to prevent business being done with such companies. I put that to the Minister of Finance in the Commons on Monday.

Senator HUGESSEN: You say in the guise of a tax bill the Government is trying to interfere with contracts made between a resident of Canada and such a company?

The CHAIRMAN: All it does is to impose a tax. It just seeks to get a share of the tax revenue which it is losing at the present time, and which it would get if you had a Canadian resident as broker.

Senator LAMBERT: But that is not the way it was put by the Minister of Finance.

The CHAIRMAN: I guess he didn't have good legal advice at the time.

Senator DROUIN: You are saying on account of this tax, this contract with insurance companies authorized for residents of the province of Quebec and doing business outside of Canada, these contracts might be less interesting and might prevent a resident from going through with it, because it would invalidate the contract in some way. I think the tax might prevent the making of contracts, but it does not interfere with the constitutionality of contracts.

The CHAIRMAN: They might choose a domestic agent instead of a foreign agent. That is a matter of what agent is used and it does not affect the insurance company.

Mr. PIPER: Except it does affect us because under the Act as drafted we are the ones who have to do all the work and the Government does nothing at all. They do nothing as far as determining who is subject to the tax, and we are the ones who have to maintain records and supply information on a silver plate.

The CHAIRMAN: I have complained so often about that. We are always complaining about the returns required to be made.

Mr. PIPER: Before the appropriate committee or with the minister we are quite prepared to discuss ways and means whereby this tax may be more easily collected with less interference, but as this is presently drafted, I suggest that there is serious doubt as to whether it will stand up if challenged in the courts, and to avoid the confusion and the expense involved I request that the Senate Committee give serious consideration to this point.

Senator VIEN: Do I understand correctly your argument can be summed up as follows. This is a penalty on something which would otherwise be legal, and which is likely, to a certain extent, to dry up that source of business.

Mr. PIPER: It is imposing a tax on a business which is perfectly legal. It is imposing a penal tax on a legal business depending on which intermediary you happen to use.

Senator VIEN: And likely to dry up that particular business?

Mr. PIPER: Whether it would or not would depend entirely on the circumstances. I imagine if a corporation found they could still make a sufficient saving to more than offset the tax they would continue to place the business abroad, and in that event the objectives of this bill would be defeated. If the saving was sufficiently great then perhaps the business might be placed through a Canadian agent or broker.

Senator BOUFFARD: If there is a tax of 10 per cent determined, there is nothing to prevent the Government from imposing a 50 per cent tax which would cause the intermediary to do otherwise.

Mr. PIPER: If the tax were 50 per cent I think it can be guaranteed the issues would be before the courts. The corporations would not stand for that. They would establish the validity of the legislation before the courts. This is imposing a penalty on persons resident in Canada doing business with companies authorized to do business in Canada but who use agents who are non-residents but who are in every respect complying with provincial laws as to counter-signatures, where they are required, and dealing with licensed agents where you must deal with licensed agents.

I think it is an important factor to consider. The contracts are in every respect legal. They are being transacted in perfect compliance with provincial law and yet a penalty is imposed if the individual happens to be a non-resident. He does not even have to be a non-resident; he just has to be outside Canada. A person who happens to be abroad is an agent outside Canada. He cannot even phone his office from New York to place business.

The CHAIRMAN: Do you agree that the taxing power of the federal Government is such that it can impose a tax on a class in the community and not impose the tax on everybody else? To be valid do you say that the tax must be imposed equally upon everybody?

Mr. PIPER: No. I am not a tax specialist, but I do know that the courts have held consistently that the federal Government may not, through guise of taxation, inter-meddle in an attempt to control the placing of insurance.

The CHAIRMAN: I know that sometimes it tries to get validity for something it does that it may not have the power to do. I am saying that this bill imposes a tax under certain circumstances and under certain conditions, and I am asking you if that is not within the scope of the federal Government?

Mr. PIPER: I do not think so, sir—not when it is related to insurance.

The CHAIRMAN: You might as well say that everybody wearing a certain colour of suit in a certain year will be subject to a tax.

Senator DROUIN: You do not contend, Mr. Piper, that if this amendment goes through without the amendment you suggest that it will affect the validity of such contracts emanating from Quebec or Ontario?

Mr. PIPER: No, it would not affect their validity. It would be merely imposing a penalty upon the purchaser of the contract.

Senator ISNOR: Mr. Piper, have you a proposed amendment to place before the chairman and the committee?

Mr. PIPER: The only amendment I would suggest would be the one that was made in 1941, and that was made to the same section of the same act.

Senator DROUIN: That is with respect to the proclamation being suspended?

The CHAIRMAN: That it be not proclaimed.

Mr. PIPER: I am only referring to subsection (b) of the proposed section 4(1).

The CHAIRMAN: I will read the 1941 amendment. It is section 29 of the Special War Revenue Act being chapter 27 of the Statutes of Canada, 1940-41. It reads as follows:

Sections three and four of this Act shall not come into effect until proclamation by the Governor in Council, and such proclamation shall not be issued until section four of this Act shall have been submitted to the Supreme Court of Canada for the purpose of having the judgment of the said Court on the constitutionality of said section four, and said judgment has been given.

Senator ASELTINE: Did that deal with taxation?

The CHAIRMAN: Yes, that deals with section 4, and section 4 of the bill of 1941 struck out of section 16(1) the words "or of any province thereof".

Senator LEONARD: I want to be clear on this. Are these all the representations that the All Canada Insurance Federation is making to us, namely, representations on the constitutional question?

The CHAIRMAN: That is right. I do not know how we would even consider entertaining such a motion without hearing from the Department of Justice and obtaining an opinion on the constitutionality, and also hearing from our own law clerk. I would not want to spring this matter on our law clerk. If the

question is raised seriously then we should ask for an opinion, and also ask our law clerk for an opinion. I think we could get that later today, or tomorrow morning.

Senator CROLL: I do not know where all this leads us, but I can foresee that time after time they will come here and raise these questions as to constitutionality. They are very easy questions to raise, and they are hard to settle. That is what will happen with respect to various bills if we take note of it now. We do the best we can with a bill that comes before us, and we assume it has been vetted by our various counsel. If there is a question as to constitutionality then there is a place to raise it. The courts are there for that purpose and they will deal with the matter as they did in 1941. As a matter of fact, I am not so sure that they will go before the courts because, as Mr. Piper said, if it was 50 per cent then it would go before the courts but if it is only 10 per cent, well—

The CHAIRMAN: We are not being asked to deal with the constitutional aspect. We are being asked to maintain the *status quo* until the matter has been decided.

Senator CROLL: But this is a matter of importance to the country in that the Government is attempting to obtain revenue. We may not agree with its method of obtaining revenue, but that is for the Government to say. It has reached out in this way and involved some considerable amount of money. Mr. Piper calls it a penalty, and it may be a penalty, and it may be a discriminatory tax, but the Government thinks it is fair. This is one way of reaching money that the Government badly needs. I do not think we have the right to put it off. If in the end the Government has to pay some of it back then there is no harm done. It has returned some money, as is indicated from what has gone on in the other place, with respect to some other matters that they have taxed and which they found out afterwards they should not have taxed. I think the lobsters are the best example. That was a tax under the austerity program.

We pass the bill, and we do it in all honesty. Let them go before the courts for a decision. I do not think we have the right to hold up this bill because somebody comes here and holds out the bogey of unconstitutionality to us. There may be nothing to it at all. Let the Government take the responsibility for it; not us. The tax is there. It is for them to decide whether it is a fair tax for all purposes. If it is unconstitutional I do not think that is our problem.

Senator LAMBERT: Was the legislation in 1941 amended by the committee, do you know?

The CHAIRMAN: We amended by providing a section that held up proclamation until the courts passed upon its validity.

Senator LAMBERT: I do not agree with Senator Croll's argument with respect to expediency at this time. There is a principle involved which we should decide now, just as we did before. I think the circumstances and the conditions that obtain at the present time make all the difference in the world to our approach to this bill. It is not an expedient matter at all.

Senator CROLL: Let me say one more word. It becomes very clear that the minister at no time gave consideration to this because he was not reached—at least, the new minister was not reached, even if his predecessor was. I think it was stated that they discussed it with Mr. Fleming but not with Mr. Nowlan. It is very important to know that it was not until last Monday that Mr. MacGregor, who is the man most concerned with all of this business and who is on top of it, and who knows more about it than anyone else, was aware that a constitutional question was raised.

The CHAIRMAN: The question is raised here, and what we have to decide is how far we are going to go on the matter. All I suggested was that it has been seriously raised as a substantial issue, and I think that we should hear from the Department of Justice and from our own law clerk. I am not prepared to commit myself any further than that at the moment.

Senator BURCHILL: I agree.

The CHAIRMAN: There are several other points. We will arrange it so that we will have officials of the Department of Justice here. As to the rest of the bill, Mr. Gorman, would you take us through it?

Senator DROUIN: Which clauses are we dealing with?

The CHAIRMAN: Section 2 of the bill which is halfway down page 4.

Senator MACDONALD (*Brantford*): Is there any objection to this clause?

The CHAIRMAN: No, there are no representations being made.

Senator MACDONALD (*Brantford*): This is for explanation?

The CHAIRMAN: Yes. Would you give us a brief explanation, Mr. Gorman?

Mr. M. J. Gorman, Director, Excise Tax Administration, Department of National Revenue: Under the Excise Tax Act some of the exemptions from sales tax are conditional. They are based upon a condition or use. Certain equipment, for example equipment sold to loggers, is exempt from sales tax while it is used in logging operations. The same applies to farming equipment. Tractors and motor vehicles are extensively used in logging and farming. However, a logger or a farmer will sometimes use the equipment in taxable operations such as road building, or he may sell the equipment to a contractor or a dealer. If the equipment is diverted, it has been subject to sales tax without any limitation, that liability might arise one year, five years or ten years, if the equipment lasts that long. Certain associations and groups claimed that it was unfair to maintain a continuing liability against the logger or the farmer concerned.

They had two main objections—the length of the liability and also that the liability in some cases was being imposed on a manufacturer, a distributor or dealer who had no control over the equipment.

This amendment is to limit the liability for the equipment mentioned to five years.

If a logger sells the equipment to a contractor, or if he himself uses it in contracting, within the five years, he becomes liable for sales tax on the fair market value at the time the equipment is diverted. The same would apply to the farmer. That is pretty well the essence of the amendment.

Senator CROLL: Who becomes liable?

Mr. GORMAN: The user. The liability has been taken off the dealer or distributor, who had no control over the equipment.

Senator CROLL: A logger who has a truck which he is using for logging purposes and for which he has no further use, may sell it to me; but I am not in that business. He may sell it within the two years. How can I tell that I bought it with tax exemption?

Mr. GORMAN: The liability is on the logger.

Senator HIGGANS: The liability follows the car. Anyone in possession of the car has to pay the tax.

Senator KINLEY: What happens when he bought it tax exempt?

Mr. GORMAN: It was tax exempt because he used it for certain purposes.

Senator KINLEY: He got it at a cheaper price when he bought it.

Mr. GORMAN: I assume so.

Senator HIGGINS: He got it at the cheaper price, less tax.

Senator KINLEY: Then you want the tax back.

The CHAIRMAN: I understand that by this section the liability is being fastened on the person who has had the exemption, that when he sells it, he is the one they look to, not the one who buys the car from him.

Senator MACDONALD (*Brantford*): I understand this amendment was opposed when this bill originally came to us; we suggested this amendment at that time and the Government would not accept it, but now they have accepted it.

The CHAIRMAN: Shall the clause carry?

Some hon. SENATORS: Carried.

The CHAIRMAN: What about clause 3?

Senator ISNOR: I would like to know from the witness as to the write-off or depreciation in the first place on a motor or tractor. What is the write-off from an income tax point of view?

Mr. GORMAN: I am not familiar with the write-off for income tax purposes. In the past we have gone along with the Customs section of National Revenue, in determining the depreciation for sales tax purposes. There are schedules for different pieces of equipment which have been used for both customs and sales tax purposes, without any reference to the income tax deviation, with which I am not familiar.

Senator ISNOR: What I am thinking about is the write-off and the period of time.

The CHAIRMAN: That does not come into this bill. We are dealing here only with sales tax and Mr. Gorman says he does not know anything about the other point.

Senator ISNOR: Very well.

The CHAIRMAN: In clause 3 you have just added a few more exemptions.

Senator DROUIN: Baling wire.

Mr. GORMAN: The main changes are the addition of a few more exemptions and a few clarifications. The senator made reference to baling wire, which we understand now we should have been called baler wire formerly, not baling wire. The information we obtained from a survey was that over 99 per cent of baling—I am going to switch into twine—that baler twine is used for exempt purposes, baling hay and straw for farmers, akin to binder twine. Binder twine has been unconditionally exempt for a long period of time.

Baling twine was exempted conditionally upon use by a farmer for baling farm produce. That caused a considerable amount of trouble, in trying to follow through, to get a very small amount of tax on baler twines that might be used by a furniture firm in tying furniture. To gain that bit of tax, it was not worth the trouble involved. Therefore, baler twine, like binder twine, now becomes unconditionally exempt from sales tax, no matter how used.

The CHAIRMAN: There are some others.

Mr. GORMAN: There are some other additions. On page 6 there is no change. On page 7 there is the introduction of lobster pots. On page 8 there are two exemptions, by the addition of:

Goods for use as part of sewerage and drainage systems, and articles and materials to be used exclusively in the manufacture thereof;

In the past, a municipality received exemption from sales tax on goods for servicing drainage systems; but a land developer, who had to put in the

sewerage systems, on the requirement of municipal bylaws, did not get exemption. Now, any person gets the exemption, including a land developer developing an area for housing.

On page 9 of the printed text, there is reference to books. Previously the exemption was for printed books, if bound. Now it includes loose leaf books—loose leaf law journals, medical journals and pages for loose leaf books.

Shall the section carry?

Some Hon. SENATORS: Carried.

Senator MACDONALD (*Brantford*): We cannot go further with this bill until we know if the Department of Justice has prepared an opinion. I believe we should get one from the Department of Justice. I do not suggest we should get our own counsel.

Thereupon the committee adjourned.

THE SENATE
STANDING COMMITTEE ON BANKING AND COMMERCE
EVIDENCE

OTTAWA, Thursday, November 29, 1962.

The Standing Committee on Banking and Commerce, to which was referred Bill C-80, to amend the Excise Tax Act, resumed this day at 10 a.m.

Senator Salter A. Hayden (*Chairman*), in the Chair.

The CHAIRMAN: I call the meeting to order. Honourable senators, we have before us Bill C-80, an act to amend the Excise Tax Act. We had considered this yesterday, and then had adjourned to secure legal opinion on the constitutionality. We were in touch with the Department of Justice, and at the level of the deputy minister the feeling was that they could not attend before a Senate committee and express an opinion on constitutionality but the minister would have to defend his legislation, and if he required legal support in doing it, why, he would bring them along. However, the minister is out of town so in those circumstances we asked our law clerk for his opinion, and I have now a memorandum from him which I propose to read to you.

Senator ROEBUCK: The minister at least knows who wrote the memorandum.

The CHAIRMAN: I will now read the memorandum:

The Committee has sought my opinion as to the constitutionality of paragraph (b) of subsection (1) of section 4 of the Excise Tax Act in the form proposed by clause 1 of Bill C-80.

The time at my disposal has been somewhat short. Nevertheless I am of the opinion that the provision in question is within the exclusive legislative competence of the Parliament of Canada to enact, as being, in pith and substance, legislation in relation to taxation. Nor, in my view does it constitute, under the guise of taxation, a colorable invasion of provincial legislative jurisdiction in the field of insurance.

Head 3 of section 91 of the British North America Act, 1867, confers "exclusive legislative authority" to the Parliament of Canada in respect of "3. The raising of Money by any Mode or System of Taxation."

The argument has been made that the measure would be tantamount to "intermeddling" with the conduct of insurance business within a province, or that it would be tantamount to an attempt to regulate the conduct of such business. I am unable to subscribe to that argument.

I seems to me that the impact of the Bill falls indiscriminately upon all insurers authorized to transact business in Canada whether authorized under the laws of Canada or any province thereof to transact business in Canada.

I do not believe that its passage would affect the validity of any contract of insurance or have any effect whatever on provincial legislation in the field of insurance. Nor would it require the persons subjected to the proposed tax to follow any particular course of conduct in relation to the business of insurance. In my opinion, there would be, in this instance, no "intermeddling" except insofar as any taxation might be said to be "intermeddling": for example, the imposition of income tax on persons resident within a province might be said to be "intermeddling" with their personal affairs.

It seems to me also that the judgment of Mr. Justice Duff, IN THE MATTER OF A REFERENCE AS TO THE VALIDITY OF SECTION 16 OF THE SPECIAL WAR REVENUE ACT, AS AMENDED, 1942 S.C.R. p. 429, is distinguishable in principle in respect of the proposed legislation. The section impugned in the 1942 reference (section 16 of the Special War Revenue Act, as amended) was applicable, so far as the incidence of the tax was concerned, only to persons (including companies) not authorized under the laws of the Dominion of Canada to transact the business of insurance.

It might well be said, therefore, to have been directed specifically against Companies registered under provincial law but not under federal law. The present Bill makes no such distinction but on the other hand applies indiscriminately to insurers authorized either under the laws of Canada or a province of Canada to transact the business of insurance in Canada.

I am aware, of course, that statements made extraneously by officials or even Ministers are not admissible in the interpretation of a statute which must be taken *ex facie*—that is to say, only the text of the Bill and the recognized canons of interpretation may be referred to. However, I must say that I was impressed by the observation of the Superintendent of Insurance that the main justification for the proposed tax is to recoup the Government for loss of the revenue that would have been obtained through income tax if the commissions were paid to agents or brokers in Canada.

That is to say, in my opinion, the Bill, in pith and substance, is what it purports to be; namely, a taxation measure providing for the raising of money by any mode or system of taxation, and that it does not constitute a colorable invasion of a provincial legislative field.

E. Russell Hopkins,
Parliamentary Counsel to the Senate.

The CHAIRMAN: Having secured this opinion, what is the feeling of the committee?

Senator CROLL: I move the adoption of the bill.

The CHAIRMAN: There is a motion to report the bill without amendment. Shall I report the bill without amendment?

Hon. SENATORS: Agreed.

The CHAIRMAN: That completes our study of Bill C-80.

The committee thereupon concluded its consideration of Bill C-80, to amend the Excise Tax Act.

APPENDIX

Summary of Presentation by All Canada Insurance Federation Re: Bill C-80. Excise Tax Act

1. All Canada Insurance Federation is a non-profit association of insurance companies doing business in Canada and writing approximately 90% of the premium income in the classes of insurance in which the Federation is interested. (Excluded: Marine, Hail, Accident, Sickness and Life).

2. The functions of the Federation are related to legislation and taxation affecting the insurance industry. There is no interest in rates or forms.

3. The Federation attempted, without success, to make representations to the Minister of Finance and, as a last resort, to the Prime Minister, with respect to the legislation which might be introduced to implement Excise Tax Act Resolution Number 8, presently before the Senate Committee on Banking and Commerce as Bill C-80.

4. The Bill as passed by the House of Commons imposes substantial responsibilities on insurance companies whether registered at Ottawa or licensed in various provinces. It does not take into account the methods of recording statistics of business and, if enacted, will require adjustment of accounting and recording systems. If for no other reason the effective date should be delayed approximately six months from the time the Bill is finally enacted.

5. Returns required under the proposed Section 5(3) of the Act as amended are to be filed on or before March 15th each year. Because of the heavy burden imposed on all insurers to file their annual statements on or before February 28th each year, it is submitted that the returns under this Act should not be required before May 1st in any year.

6. Before assuming the additional administrative expenses which this amendment to the Excise Tax Act imposes on the insurance industry, and adjusting accounting and recording systems to comply with the Act as amended, and to avoid, if possible, the retaliatory measures which other jurisdictions will either put into effect automatically or by new legislation, All Canada Insurance Federation submits it is not unreasonable to request the Standing Committee on Banking and Commerce to examine the constitutionality of Bill C-80.

7. In 1932 the Judicial Committee of the Privy Council ruled that Canada could not enact legislation to prohibit a foreign insurance company from transacting business unless it were registered under the Foreign Insurance Companies Act if it was validly licensed by a province of Canada. In respect of the proposed sections of the Canadian legislation then being considered, the opinion of Lord Dunedin reads as follows:

But the sections here are not of that sort, they do not deal with the position of an alien as such: but under the guise of legislation as to aliens they seek to intermeddle with the conduct of insurance business, a business which by the first branch of the 1916 case (A. G. for Canada v. A. G. for Alberta) has been declared to be exclusively subject to Provincial law.

8. In 1941 Parliament enacted legislation under the Special War Revenue Act (now the Excise Tax Act) which again sought to impose a tax on those obtaining insurance from a company licensed in a province but not registered

with the Department of Insurance at Ottawa. Before the amending act was passed, the Senate amended it to the effect that it should not come into full force and effect until a judgment as to its validity in law had been obtained from the Supreme Court of Canada.

9. The unanimous decision of the Supreme Court was delivered by the Chief Justice of Canada in October, 1942. It held that if a contract of insurance may be validly negotiated within the provisions of the provincial law, whatever they may be, the Parliament of Canada cannot impose penalties or taxes in any attempt to regulate or control such contracts. *Inter alia*, the Chief Justice stated "I think when that judgment (of Lord Dunedin in the 1932 case) is read as a whole its language points to the conclusion that . . . these provisions stood in the same category as those relating to the forms of contracts and those governing transactions between an insurance company and its agents. . . . The principle of exclusive provincial control of the business of insurance within the province lies at the foundation of the judgment."

10. There is no prohibition under the laws of any province against insurance being bought by a resident from a company licensed in the province from a non-resident agent or broker. Some provinces, for specially named classes of insurance, may require that such a policy be signed or counter-signed by a provincially licensed agent who is to receive the commission "or some part thereof".

11. Ontario and Quebec do not require that an agent be either a resident of the province or even a resident of Canada. A contract, under Quebec and Ontario law may be purchased by a resident of the province from a company licensed by the province through an agent who may be resident anywhere in the world but can only solicit business in Quebec or Ontario if he holds an agent's licence. Should Bill C-80 as presently drafted be enacted, those who bought insurance legally under the provincial law become subject to a federal tax simply because of the residence of the agent who acted on their behalf.

12. The Parliamentary Secretary to the Minister of Finance stated at page 1770 of *Hansard* for November 19th, 1962 that the intent of this part of Bill C-80 was not to derive revenue but rather to discourage the placing of insurance with non-resident agents.

13. It is submitted that the foregoing provides *prima facie* evidence that the validity of the proposed amendments may be questioned and that they should not be implemented without a full study of the legal problems involved and, if deemed advisable, as was the case in 1941, a referral to the Supreme Court of Canada.

E. H. S. Piper, Q.C.,
*Manager and General Counsel All Canada
Insurance Federation.*

Montreal, November 27, 1962.



First Session—Twenty-fifth Parliament
1962

THE SENATE OF CANADA

PROCEEDINGS
OF THE
STANDING COMMITTEE
ON

BANKING AND COMMERCE

To whom was referred the Bill C-71, intituled:
“An Act to amend the Farm Credit Act”

The Honourable SALTER A. HAYDEN, Chairman

WEDNESDAY, NOVEMBER 28, 1962

WITNESS:

Mr. G. Owen, Director, Farm Credit Corporation

REPORT OF THE COMMITTEE

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1962

THE STANDING COMMITTEE ON BANKING AND COMMERCE

The Honourable Salter Adrian Hayden, *Chairman*

The Honourable Senators:

Aseltine	Gouin	O'Leary (<i>Carleton</i>)
Baird	Hayden	Paterson
Beaubien (<i>Bedford</i>)	Higgins	Pearson
Beaubien (<i>Provencher</i>)	Horner	Pouliot
Bouffard	Howard	Power
*Brooks	Hugessen	Pratt
Burchill	Irvine	Reid
Campbell	Isnor	Robertson
Choquette	Kinley	Roebuck
Connolly (<i>Ottawa West</i>)	Lambert	Smith (<i>Kamloops</i>)
Crerar	Leonard	Taylor (<i>Norfolk</i>)
Croll	*Macdonald (<i>Brantford</i>)	Thorvaldson
Davies	McCutcheon	Turgeon
Dessureault	McKeen	Vaillancourt
Drouin	McLean	Vien
Emerson	Molson	Willis
Farris	Monette	Woodrow—50.
Gershaw		

(Quorum 9)

*Ex officio member.

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Tuesday, November 27th, 1962:

Pursuant to the Order of the Day, the Honourable Senator Aseltine, P.C., moved, seconded by the Honourable Senator Horner, that the Bill C-71, intituled: An Act to amend the Farm Credit Act, be read the second time.

After debate, and—

The question being put on the motion, it was—
Resolved in the affirmative.

The Bill was then read the second time.

The Honourable Senator Aseltine, P.C., moved, seconded by the Honourable Senator Sullivan, that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—
Resolved in the affirmative.

J. F. MacNEILL,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

WEDNESDAY, November 28, 1962.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 2:00 p.m.

Present: The Honourable Senators: Hayden, *Chairman*; Aseltine, Beaubien (*Bedford*), Bouffard, Brooks, Burchill, Croll, Dessureault, Drouin, Higgins, Hugessen, Kinley, Leonard, Power, Reid, Robertson, Taylor (*Norfolk*), Thorvaldson, Turgeon, Vaillancourt, Vien, Willis and Woodrow.

In attendance: Mr. E. R. Hopkins, Law Clerk and Parliamentary Counsel, and the Official Reporters of the Senate.

Bill C-71, intituled "An Act to amend the Farm Credit Act", was read and considered.

On Motion of the Honourable Senator Aseltine it was Resolved to report recommending that authority be granted for the printing of 800 copies in English and 200 copies in French of the Committee's proceedings on the said Bill.

Mr. G. Owen, Director, Farm Credit Corporation, was heard in explanation of the Bill.

It was Resolved to report the Bill without any amendment.

At 2:45 p.m. the Committee adjourned until tomorrow, Thursday, November 29, 1962, at 10:00 a.m.

Attest.

James D. MacDonald,
Clerk of the Committee.

REPORT OF THE COMMITTEE

WEDNESDAY, November 28, 1962.

The Standing Committee on Banking and Commerce to whom was referred the Bill C-71, intituled: "An Act to amend the Farm Credit Act", have in obedience to the order of reference of November 27, 1962, examined the said Bill and now report the same without any amendment.

All which is respectfully submitted.

SALTER A. HAYDEN,
Chairman.

THE SENATE
STANDING COMMITTEE ON BANKING AND COMMERCE
EVIDENCE

OTTAWA, Wednesday, November 28, 1962.

The Standing Committee on Banking and Commerce, to which was referred Bill C-71, to amend the Farm Credit Act, met this day at 2 p.m.

Senator Salter A. Hayden (*Chairman*), in the Chair.

On a motion duly moved and seconded, it was agreed that a verbatim report be made of the committee's proceedings on the bill.

On a motion duly moved and seconded, it was agreed that 800 copies in English and 200 copies in French of the committee's proceedings on the bill be printed.

The CHAIRMAN: Honourable senators, I think we shall follow our usual procedure. Mr. Owen can give us a brief statement of the purposes of the bill, and then if you have any questions you can ask them.

G. Owen, Director, Farm Credit Corporation: Mr. Chairman and honourable senators: I think first I would like to give a brief background of the reasons for these amendments to the act. As farming has changed so rapidly in Canada, as you are all aware, the capital requirements of farmers to set up satisfactory farming units has increased tremendously, and as a result we find that the ceiling of the borrowing of this corporation provided under the act has not been sufficient to allow it to meet these needs in the future; so one of the principal purposes of this bill is to increase the amount of capital the corporation will have to increase their borrowing power and thus enable them to meet the needs of the farmers applying for loans.

This act was first brought out in 1959, and in spite of the best intentions at the time of drafting legislation there are bound to be things that crop up which were not foreseen at the time the legislation was provided, such as some restrictions which are inherent in the wordings and have been found to be unnecessary for the operations of the corporation or for the safety and security of public funds, thus putting undue restrictions on the farmers.

The second purpose of the act is to remove certain of these restrictions that we feel have been found to be unnecessary.

The third function of the bill is to enlarge somewhat the scope and the field of operations of the corporation.

As you know, the corporation was set up in the fall of 1959. Since that time it has expanded in size and scope, it has become organized, it has established a series of credit advisors in the farming communities all across Canada and trained them, many of whom were already experienced men when they came to us from the Veterans Land Administration.

The CHAIRMAN: I was just wondering if you would pause there for a moment. You told us that this act was introduced and became law in 1959?

Mr. OWEN: That is right, sir.

The CHAIRMAN: Well, it succeeded an earlier administration in connection with farm credit, the Canadian Farm Loan Board?

Mr. OWEN: That is right, sir.

The CHAIRMAN: How long had the Canadian Farm Loan Board been in existence?

Mr. OWEN: It had been in operation since 1929, sir.

The CHAIRMAN: And I see the corporation has, as successor to the board, taken over whatever assets the board had at that time.

Senator REID: It succeeded the Canadian Farm Loan Board?

The CHAIRMAN: The Canadian Farm Loan Board was succeeded by the Farm Credit Corporation, and all the persons who were at that time officers or employees of the Canadian Farm Loan Board were deemed to have been appointed under the section of the new act. I am wondering just what you inherited.

Mr. OWEN: We inherited first, of great importance, a reserve of \$3,700,000 odd, and a staff of about 170, and of those about 27 were actually appraisers out in the field of operation.

The CHAIRMAN: How much money had they out on loan when you took them over?

Mr. OWEN: In the neighbourhood of \$100 million.

The CHAIRMAN: Will you proceed, Mr. Owen?

Mr. OWEN: The third purpose of the bill, Mr. Chairman, is to enlarge the scope, to increase the number of farmers who will be eligible for assistance from the corporation since we now have the resources to handle a broader scope of legislation.

Senator ASELTINE: You are now referring to clause 2, are you?

Mr. OWEN: That is clause 2, primarily. I thought I would give these few brief remarks to set out the three main functions of the bill and then take up the individual clauses.

So I will now refer to clause 1 of the bill. When the corporation was set up the capital was set at \$8 million which enabled the corporation to borrow from the Minister of Finance amounts up to \$200 million.

Senator HIGGINS: What relation is the capital stock to the authority for borrowing?

Mr. OWEN: The corporation is authorized to borrow twenty-five times the amount of its capital stock.

Senator HIGGINS: Are any other companies formed in this way, that is, capitalized at a certain amount and then enabled to borrow up to twenty-five times that amount?

Mr. OWEN: I think the banks are operated that way—their ratio is 20 to 1, I believe.

Senator HIGGINS: Of course it is only of academic interest; I thought some people here would like to know about that feature.

Mr. OWEN: As a matter of historical fact, in the original Farm Loan Act part of the stock was subscribed by the federal Government, part by the provincial governments and part by the farmers themselves. Over the course of the years this was amended to the point where all the capital stock is now subscribed by the federal Government. The borrowings of our corporation, the same as other financial institutions, is limited by the amount of the capital stock.

In 1961 this capital stock was increased to \$12 million permitting the corporation to borrow up to \$300 million from the Minister of Finance, but present predictions are that this borrowing authority will have been committed to its maximum by about the end of June of next year. The purpose of this bill is to increase the capital stock by another \$4 million and this will permit us to borrow another \$100 million. This is in the nature of a revolving fund. As we pay back the Minister of Finance we can borrow from him again so, in addition to this \$100 million provided for in here, we will be able to lend out any capital repayments that are made by our borrowers during the course of the year.

Senator KINLEY: What interest rate do you charge?

Mr. OWEN: We charge the farmers five per cent.

Senator KINLEY: Are there any additional charges?

Mr. OWEN: We charge a fee for making an appraisal of the borrower's farm to begin with, and he must pay the legal costs involved in getting the mortgage, and if he is a borrower under Part III, where the farm operations are supervised, we charge him \$25 a year fee for supervising his farm operations.

Senator HUGESSEN: What does the Government charge you for these advances?

Mr. OWEN: At the moment it happens to be 5.5 per cent, which leaves us a very low margin on which to operate since we lend at 5 per cent. However, the average cost of the money we have from the Minister of Finance is about 4.6 per cent because we have money borrowed in the past at lower rates. During the first half of this present fiscal year our borrowing rate was 4.5 per cent.

Senator KINLEY: For what duration do you make the loan?

Mr. OWEN: Running up to 30 years. Some of them are 20, and some 25 years duration.

Senator KINLEY: Does a farmer begin to pay back in the course of the first year or is the full loan extended for a period?

Mr. OWEN: The first year we charge them what we call a period of broken interest, interest from the time we make the loan to a specific payment date; and the next year after that he has a regular amortized payment to make.

Senator REID: Under the old act, and up to now, it has been to erect farm buildings or to clear, drain, irrigate, fence or make any other permanent improvement, and now you are adding "to the mortgaged farm." What else would you want to do outside of that? Why would he need further mortgage money?

Mr. OWEN: You are referring to clause 2?

Senator REID: Yes.

Mr. OWEN: What has happened here is that when the farmer borrows money he mortgages the farm to the corporation. We were authorized under the previous act to make improvements to the mortgaged land. In many instances the farmer may have 160 or 320 acres of deeded land, and along with this a grazing lease on grazing land from the province, a long-term lease for 20 to 30 years, and sometimes it is required that improvements be made to the land that is not included in our mortgage.

Senator HUGESSEN: Why could not he mortgage his leasehold interest?

Mr. OWEN: In some provinces he can, but in other provinces he cannot.

Senator HUGESSEN: When he can, would you insist on it?

Mr. OWEN: If we found we needed it as security we would; but if we did not need it as security we would not. We have made arrangements with the province to make sure this leased land will stay with the deeded land in the future, but we have not specifically a mortgage and we are not entitled to make improvements to that leased land.

The CHAIRMAN: Why should you make improvements to something you have no agreement about?

Mr. OWEN: Let us say the deeded land happened to be worth \$20,000 and we are lending the man \$12,000. We have ample security. The farmer has a long-term lease on this leased land. He is assured of having the use of it for a long time, and he may need to put in a water supply or fencing or make some other improvement. We lend him the money, but then we would not have to have a security on the lease.

Senator REID: In how many cases of that sort do you think there would be a benefit? What provinces would benefit?

Mr. OWEN: These improvements are made at the time we get the mortgages.

Senator REID: He already has a loan from the Government to make all those improvements, and now you come along and assist him further. What provinces would benefit?

Mr. OWEN: If we felt he could not carry more on his operation, then we would not grant him any more.

The CHAIRMAN: In what provinces are you doing it?

Mr. OWEN: At the present moment, in the provinces of British Columbia and Alberta. This particular clause will also come into force in other instances. You might find a farmer who has two or three parcels of land in his farm, and for some reason or other he is not able to give us a good mortgage against one part of this farm.

Senator HUGESSEN: Is that defective title?

Mr. OWEN: Defective title or life interest, or something of that nature. He may give us a good mortgage on the 200-acre farm, which is ample security, but he may need to put \$1,000 or \$1,500-worth of improvements on these other pieces of land, and it may be a sensible thing to do, and we do not need any security against it and he cannot give us security because of a title defect or life interest, or something, and we think it reasonable under these circumstances to enable him to do that.

Senator LEONARD: In other words, it extends the purposes for which you might make a loan?

Mr. OWEN: Yes.

Senator HUGESSEN: What we are really doing is to put it in the hands of the corporation, to use in a reasonable way.

Mr. OWEN: Yes. If a man has a one-year lease on a piece of land now we would not lend him money to make any improvements.

Senator HIGGINS: In those long lease cases you are talking about, it is rather a doubtful title because there must be some covenants attached to it, and if he does not do certain things you take it back?

Mr. OWEN: He must have deeded land with the loan, but we recognize he has the other land and we have arrangements with the provincial governments to provide us with security of tenure on this land.

Senator TAYLOR (Norfolk): This partly answers Senator Reid's question in relation to the application of this act in my province and some of the smaller provinces, because we have reached the time when most farmers recog-

nize that if they are to stay in the farming business they have to increase their holdings. In some instances they can buy a small farm and in some instances they may not be able to buy it because they may lease it under a longer term. And that is one of the reasons why this is in there, because, I think, it will be used in all provinces, and it should be used with care. I spoke in relation to this on the second reading last evening and I suggested there should be a provision in here to indicate this would only apply to land owned by the mortgagor or to land held under long lease. It says here for "improvement to the mortgaged farm or to other land used by the borrower as part of his farming enterprise." There may be a farmer who has only a lease for one year, two years or three years and he may want to spend a lot of money on that in the hope he may get the lease renewed from year to year.

The CHAIRMAN: This is enabling. It is a matter for administration by the corporation as to whether in the particular case they should advance the money.

Senator TAYLOR (Norfolk): I agree, but at the same time I think there should be a provision.

Senator REID: Here you are encouraging the farmer to go into other industries besides farming.

The CHAIRMAN: That comes later, and I will be watching that too.

Senator ASELTINE: In the prairie provinces the natural resources are owned by the provinces, and there are leases running for thirty years.

An Hon. SENATOR: With options to buy?

The WITNESS: Some have and some have not.

Senator ASELTINE: In a case of that kind I would think the corporation could, under this section, make a loan so that the property could be improved and make it a more economic unit with the other land.

The CHAIRMAN: It depends if there is enough security. It depends on the judgment of the administration.

Senator ASELTINE: That is what Mr. Owen said: they always made sure they had plenty of security on the loan.

Mr. OWEN: There are two things we are looking for. We are looking for security on the first mortgage and that the man has security of tenure on the other land for a long enough time to justify the expenditure.

Senator KINLEY: What is the proportion of the loan?

Mr. OWEN: Seventy-five per cent.

Senator KINLEY: Do you ever find that it affects the people who are doing business with him—the fact that he has mortgages of this kind, in such a way that he cannot carry on?

Mr. OWEN: I think as far as outside credit rating is concerned it depends on the credit reputation he has himself, more than to the fact that we have lent him money for productive purposes. When we take chattel mortgages, as we sometimes do, it does affect his outside credit rating and in some instances this is one of the reasons we take them, where we have reason to believe that in the exercise of our discretion this man's outside credit should be curtailed to a certain extent.

The CHAIRMAN: All right. Continue.

Mr. OWEN: There is nothing further about clause 1.

The CHAIRMAN: Clause 1 simply increases the capital. That carries?

Some Hon. SENATORS: Yes.

The CHAIRMAN: Clause 2, subsection (1)—we have had an explanation of that, and subsection (2), this is where the expression “secondary enterprise” develops.

Mr. OWEN: We have here section (iva) first, and section (ivb). The secondary enterprise is in (ivb). Would you like me to deal with (iva) first?

The CHAIRMAN: All right.

Mr. OWEN: Occasionally a man starting up an enterprise or switching from one kind of farming to another has a period over a year or two years during which he does not derive any income from his farming enterprise. Supposing he is starting out with beef, it may be a couple of years before he has anything to sell, and the purpose of this Act is to provide that where a man has sufficient security in the property he may be able to borrow against this to pay for his operating and living costs during that period while waiting for the enterprise to develop. He may start off with a number of cattle, and by the time the two years are up he may have an income of \$10,000, represented by the increase in livestock held.

Senator HUGESSEN: This is the analogy of a corporation building a big plant and charging interest against capital during construction.

Mr. OWEN: (ivb)—this is a very interesting one. In many areas of Canada it is very difficult for a farmer to assemble enough land to get a good standard of living from agriculture alone.

It may be because of the nature of the land and its location that he has an excellent opportunity of developing some other sort of income. Providing it is a secondary business and that farming is still his principal occupation—providing he is still a farmer—then this clause would permit us to assist him in developing that secondary enterprise. We think that this will probably be used mostly in the development of tourist and recreational facilities.

Senator REID: Supposing he ignores farming for a while and puts all his energies into the secondary business?

Mr. OWEN: Providing when we start farming is his primary business—it may be that after the loan has been made this man will develop his secondary business to the point where it becomes his primary business. If so, we will have helped a man who had a marginal enterprise to get a start. He has now gone into something different, and thus we will have helped to solve the problem of that low income farmer.

The CHAIRMAN: But in this bill the corporation is the Farm Credit Corporation, is it not?

Mr. OWEN: That is what I am coming to. Our purpose is to assist that man providing it is a secondary enterprise. If at a later time he, from his own resources, builds that secondary enterprise up, which, of course, he has the right to do, then we are quite satisfied. So far as we in the corporation are concerned he must be primarily a farmer, and this other enterprise that he may develop on his farm must be secondary to his farming enterprise.

The CHAIRMAN: But look at the situation if you stop right there. This scheme is to help farmers and here is a man who has a farm, and I suggest if you are making a loan to him as a farmer in relation to the development of the farm, without any thought to the secondary enterprise, you would not lend him as much money if he came in to you with respect to the secondary enterprise?

Mr. OWEN: That is right, sir.

Senator REID: Supposing he wanted to put up a gas station?

The CHAIRMAN: Yes, you are making use of the act for extraneous purposes.

Senator REID: Supposing he started to devote all his energy to the gas station and leave the farm alone?

Mr. OWEN: If we were satisfied that this gas station was secondary to his farming enterprise then we would give him a loan. I would rather get back to the kind of thing we have in mind. Let us take the man who has a farm on the edge of a lake. He has land that can very well be used for the building of cottages or cabins for rent. His farm is not big enough to give him an adequate standard of living if he is farming alone, and he now wants to put some money into developing cottages or cabins on the edge of his farm with the intention of improving his standard of living. However, he still remains a farmer. This would enable us to help this individual low income farmer to improve his standard of living and still remain a farmer. If at a later date he develops this secondary enterprise on his own then that would be his own concern. We would not help him to go beyond the point where the other enterprise remained secondary to farming.

Senator REID: But it would be possible to neglect the farm and build up the other business.

Mr. OWEN: This would be possible, but it is possible for such farmers to neglect their farms even if they have not another business. There is nothing we can do to prevent that. We have to assist this man, and to begin with we must find out how interested he is in developing an adequate standard of living and try to make our loan decision on this basis. I can assure you that this man with a small farm without an adequate income is just as likely to neglect his farming enterprise without a secondary enterprise as he is with one. He may very easily say: "I can't make enough of a living here, and I will go and work outside".

Senator DROUIN: To qualify for these loans he must have been a farmer.

The CHAIRMAN: Not "have been", but he must be.

Senator DROUIN: He must be a farmer in order to qualify?

Mr. OWEN: That is right, and he must provide us with plans as to how he is going to operate that farm. He must show us, firstly, that his income from the farm plus his income from his secondary enterprise are sufficient to provide him with a standard of living which will enable him to carry on; secondly, that he will be making efficient use of his land; and, thirdly, that farming will be his principal source of income.

Senator KINLEY: This is quite important especially to farmers on the Atlantic coast. In my plant I have a hundred men who live on farms and who come a long way to work. These men have a farm, but they come into town to work, and they have Saturdays and Sundays in which to do something on the farm. Such a man finds that he can live cheaply on that farm and can earn cash money in the industry. If he wants to build a new barn on his farm I do not see why he should not qualify under this.

The CHAIRMAN: He would because that is part of his farming operation. I am talking about the secondary enterprise.

Senator KINLEY: Take the lobster fisherman. There are only certain seasons during which he can fish for lobsters, and he has a good business there, but he has a lot of time on his hands at other seasons, and usually he has a piece of land on which his family live, and together they work. I do not see why he should not be qualified under this so that he may obtain money in order to build a barn or, perhaps, a blacksmith's shop, or a little mill to saw lumber.

Mr. OWEN: One of the principal purposes of this particular clause in the bill is to enable us to co-operate more closely with the Agricultural Rehabilitation and Development Administration.

This other act is primarily designed to rehabilitate low-income rural areas. In doing this, in developing any overall programs for the development of a particular rural area, it will be necessary to recognize that individuals within the area will have to develop ways and means of improving their income and to do this they are going to need credit. This is designed partly so that we will be able to move in, co-operate with the ARDA authorities, to provide credit to help individual farmers to improve their income.

As to tourism and recreational facilities, and the way in which they can be developed, I think there is a tremendous potential there.

The CHAIRMAN: In subparagraph (ivb) it says:

to assist in the development on the mortgaged land of a secondary enterprise not being a farming enterprise,

Does that mean in the development of the land to be mortgaged?

Mr. OWEN: That is right. We would actually take the mortgage first and then we start to disburse the money.

The CHAIRMAN: Would it seem to contemplate you are going to advance the money and take a mortgage on the land, then assist in the development of a secondary enterprise on that land, and take authority here to advance more money to do that?

Mr. OWEN: That is not the way it is intended. We would approve a loan, say \$10,000—\$6,000 with respect to the farm and \$4,000 with respect to the secondary enterprise—and we would take a mortgage against that land for \$10,000 and then disburse the money.

Senator LEONARD: If the farmer decides to sell off that part of his land which contains the secondary enterprise, such as a motel or cottages, will any of your mortgage money ever be left at five per cent interest on the property in the hands of the subsequent purchaser or will you insist on your mortgage being paid off in so far as that part of the security is concerned?

Mr. OWEN: If he sells any part of the farm, we would make a decision with respect to what part of our loan is related to that part, and we would not finance anything on the part that is sold.

Senator LEONARD: For any subsequent purchaser. If he sells the farm—

Mr. OWEN: That is another matter.

Senator LEONARD: If he sells his farm enterprise to somebody else, then the mortgage goes along with the land?

Mr. OWEN: Provided that the purchaser is a farmer and not a man who could buy on his own without any help.

Senator LEONARD: In the other situation, where the secondary enterprise becomes a primary one and the farm becomes a secondary enterprise and is not of great consequence, does the mortgage still stay on? You have no right to call it in or interfere with it?

Mr. OWEN: We have the right to call it in.

Senator LEONARD: If you decide.

Mr. OWEN: Provided he does not farm the farm property; but whether we would do this is another matter.

Senator THORVALDSON: I wonder if I am right in my reading of this clause:

(ivb) to assist in the development on the mortgaged land of a secondary enterprise...

It seems to me that that contemplates doing this additional financing later on, namely, when a farmer has had a mortgage on for some few years and then decides he would like to develop a secondary enterprise. Is not that what it contemplates?

Mr. OWEN: No, that is not what it contemplates. It contemplates that we would take the mortgage and then disburse the money.

Senator ASELTINE: That is what you do when you are building a house? You take the mortgage and then keep the house until all the money is paid?

Mr. OWEN: That is right.

Senator HUGESSEN: When he applies for the loan and he tells you how he proposes to use the money, is it at this point you decide whether it is a secondary enterprise or not?

Mr. OWEN: At that time he gives a detailed explanation of how he intends to operate the farm, the income and expenditure he expects and the net return he will have left over.

The CHAIRMAN: Shall clause 2 carry?

Some Hon. SENATORS: Carried.

The CHAIRMAN: Clause 3 merely deals with additional charges, the tariff?

Mr. OWEN: Yes. The only thing we have done is set a maximum amount that we can charge for appraisals.

Senator THORVALDSON: I cannot understand what appraisal has to do with the determination of title and registration of mortgages. Is not that a legal matter and not an appraisal matter?

Mr. OWEN: They are all covered here together. They were covered, but they have added this part, to put a limit on the appraisals. Previously it read:

(f) prescribing the charges that may be made against borrowers for the expenses of determination of title and registration of mortgages and other documents, and, subject to paragraph (d) of section 26, of appraisals.

In other words, this section of the act previously gave us the authority to set the charge for appraisals and for legal work and for all these other things.

Senator THORVALDSON: Does that mean that legal work is limited to ten dollars?

Mr. OWEN: No, it means merely that the appraisal is limited to \$10.

Senator KINLEY: Do you demand a survey of the land and a plan?

Mr. OWEN: Ordinarily not, sir. There may be rare instances where it is impossible to get an adequate legal description, and we may require a survey, but if it can be avoided, we do not. There are instances where nobody knows which land is which.

Senator TAYLOR (Norfolk): This seems to be in conflict with Part III of the act. There is a provision of two per cent or \$100 whichever is the lesser.

Mr. OWEN: Clause 7 repeals that part of the act which set the fees under Part III. That section saying two per cent or \$100, whichever is the lesser is repealed by clause 7 of this bill, sir.

The CHAIRMAN: Shall the section carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Section 4 is simply adding another provision as to volunteered security, is it not?

Mr. OWEN: We have been accepting life insurance from borrowers for some time, and there is some doubt as to whether we are legally authorized to do so, and this gives us the right.

The CHAIRMAN: Shall section 4 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Section 5 is what they call an accommodating mortgage. How will that work?

Mr. OWEN: What happens occasionally is that a farmer's son wishes to buy land and does not have enough money for the down payment and we cannot lend him enough money based on the value of the land. His father comes along and says, "I have a piece of land worth \$7,000 or \$8,000, and I will put it up as additional security." To do so the father has to join with the son in the mortgage and becomes a borrower and loses his right to get a loan for himself or for another son. This clause is merely to allow the father to put up security for one son without losing his right for a loan in his own behalf or to put up security to help another son.

The CHAIRMAN: Except that by taking that course he has limited the amount of the credit he can get.

Mr. OWEN: That is right, sir.

Senator LEONARD: Is it clear by this bill that this only applies to fathers and sons?

Mr. OWEN: It is not, sir. It is an accommodating mortgage. The same circumstance might apply if an uncle might wish to help a nephew or some person help another. As long as the first loan goes to help a man to set up an enterprise, if another puts up the additional security he still has a right to get a loan for his own enterprise.

Senator HUGESSEN: It might happen between friends.

Mr. OWEN: That is right, sir. In fact, it is really an opportunity for this man to limit his personal responsibility in the first loan.

Senator DROUIN: It might also apply to an uncle and his niece?

Mr. OWEN: It could be.

The CHAIRMAN: Shall section 5 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Now section 6?

Mr. OWEN: Section 6 really is to clear up one of those things which is a misunderstanding. The way it was set up before, if a man wanted a loan under Part III and was 44 years old we could approve it, but if between the time we approved in and the time we disbursed the money he became 45 years of age, we could not disburse it. This seemed rather silly, hence the amendment.

The CHAIRMAN: Shall section 6 carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Section 7 we have already dealt with.

Senator REID: I notice that paragraph (d) says: "the borrower shall pay to the corporation an appraisal fee of two per cent of the amount of the loan or one hundred dollars whichever is the lesser, and shall pay to the corporation an annual supervising fee as prescribed by the corporation." Is that the total fee?

Mr. OWEN: This is the annual supervising fee of \$25.

Senator REID: It does not say so.

The CHAIRMAN: Yes, it does. It states that: "the borrower shall pay to the corporation an annual supervising fee not exceeding twenty-five dollars as prescribed by the corporation."

Shall that part of the section carry?

Hon. SENATORS: Carried.

The CHAIRMAN: Now the second part of that section 7 on.

Mr. OWEN: Particularly in the common law provinces it is usual for a man and wife to hold land as joint tenants. Under Part III of the act as previously existing we were informed that we could not lend to a man and his wife as joint tenants but we must lend to one individual alone. This meant that the farmer and his wife as joint tenants had to transfer the title to the land to the farmer in his own right to get the loan.

Senator ASELTINE: This makes the farmer and his wife as one person?

Mr. OWEN: And this seemed to be an unnecessary interference. So this is to permit us to make loans in accordance with the way people actually hold title.

Senator DROUIN: Would this provision apply to two brothers who are owners of the same farm?

Mr. OWEN: It would not, under Part III of the bill, but two brothers owning the same land could borrow under Part II as joint applicants. Under Part III we are supervising and we do not want to try to supervise two farmers on the same land.

The CHAIRMAN: Shall the section carry?

Hon. SENATORS: Agreed.

The CHAIRMAN: Clause 8. This deals with a covenant.

Mr. OWEN: Section 8 is merely an amendment. Up until now a farmer borrowing under Part III has been required to take supervision of his operations until the loan is reduced to 65 per cent of the value of his farm. In comparison, farmers coming to us to borrow under Part II could borrow up to 75 per cent of the value of his farm without taking supervision if he did not want it. We found this somewhat inequitable. It usually takes about 13 or 14 years for a farmer to reduce his debt to the corporation to 65 per cent of the value of his land and we thought that was too long to require him to take supervision. By this amendment, as soon as he has repaid the loan to 75 per cent of the value of the land—in other words when he has paid that part of the loan which is secured by chattels he can forego supervision if he desires. However, if he wants to continue, we can allow him to continue.

Senator VIEN: When you speak of the value of the land you speak of lending value?

Mr. OWEN: That is right, our appraised value of the land and buildings.

The CHAIRMAN: Shall the section carry?

Hon. SENATORS: Agreed.

The CHAIRMAN: Section 9.

Mr. OWEN: Under existing legislation a farmer who borrowed under Part III of our act was not eligible for a loan under the Farm Improvement Loan Act until he had reduced his debt to 65 per cent of the value of the land. Once again we felt he should be eligible when he has reduced it to 75 per cent, to put him on the same basis as a borrower under Part II.

The CHAIRMAN: Shall Section 9 carry?

Hon. SENATORS: Agreed.

The CHAIRMAN: Shall I report the bill without amendment?

Hon. SENATORS: Agreed.

Senator BURCHILL: Mr. Chairman, I have been very much impressed with the way this corporation has grown in recent years and undoubtedly it must be performing a worthwhile service to the agricultural people of Canada, particularly in later years. The figures that were given last night in the house were

most impressive to me. Mr. Owen, you finance this corporation, I understand, on the difference between the rate of interest charged on your loans and the rate that you pay the Government for the money you receive. Is that correct?

Mr. OWEN: That is right, Senator Burchill.

Senator BURCHILL: How did you come out in your 1961 experience?

Mr. OWEN: We lost \$776,000.

Senator LEONARD: How is this rate of 5.5 per cent, the current rate charged by the Government, determined? It is not fixed in the act, is it?

Mr. OWEN: No, sir, that is fixed by Governor in Council. It is in accordance with the cost of money. It is established by the Government as a lending rate for money provided to all crown corporations and it is set every six months.

Senator ASELTINE: But the corporation still has a reserve of almost \$3 million?

Mr. OWEN: At the beginning of this fiscal year the reserve amounted to \$2.7 million.

Senator REID: Is your lending rate the same all the way through?

Mr. OWEN: Our lending rate is, but our borrowing rate varies a good deal.

Senator HUGESSEN: I think the sponsor of the bill said that at the present time 92.1 per cent of the loans of the corporation are in good standing.

Mr. OWEN: As of the 31st of March.

Senator HUGESSEN: How does that compare with previous years? Is your ratio of good loans to bad loans going up or going down?

Mr. OWEN: It has gone up a little bit over the last couple of years.

Senator HUGESSEN: What has gone up?

Mr. OWEN: The percentage of loans in good standing has gone up slightly over the past two years. I rather think at the moment it may be a little lower because of bad crop conditions last year. I have not an up to date estimate of this but it may be just a little bit lower. This fluctuates a bit in accordance with crops and revenue in the year.

Senator HUGESSEN: Does it show any great variation over the years?

Mr. OWEN: Very little.

Senator HIGGINS: The scheme is a success because your losses have been so small, is that right?

Mr. OWEN: I am not sure that I would want to measure the effect of credit in terms of the amount of losses. I think it has been a success because of the number of farmers we have enabled to develop economic farm units.

Senator HIGGINS: I understood last night that the actual amount of money lost because of bad loans amounted to \$12,000.

Mr. OWEN: Over the past three years it has been very little.

Senator VAILLANCOURT: Does not the province of Quebec make a rebate to the farmer on the interest on the loan that he has with the corporation?

Mr. OWEN: Yes, we charge 5 per cent interest, and the provincial government pays the corporation half of the interest charges on behalf of each borrower.

Senator VAILLANCOURT: For all the old loans?

Mr. OWEN: For all the old loans up to a maximum of \$15,000. They do not pay anything on the amount above \$15,000.

Senator LEONARD: Do they pay that even if the borrower does not pay the balance?

Mr. OWEN: That is right, sir.

The committee thereupon adjourned.



First Session—Twenty-fifth Parliament
1962

THE SENATE OF CANADA
PROCEEDINGS
OF THE
STANDING COMMITTEE
ON
BANKING AND COMMERCE

To whom was referred the bill C-49 intituled:
"An Act to amend An Act to amend the Combines Investigation Act and
the Criminal Code"

The Honourable SALTER A. HAYDEN, Chairman

THURSDAY, NOVEMBER 29, 1962

WITNESS

Mr. J. J. Quinlan, Deputy Director, Combines Investigation Act.

REPORT OF THE COMMITTEE

ROGER DUHAMEL, F.R.S.C.
QUEEN'S PRINTER AND CONTROLLER OF STATIONERY
OTTAWA, 1962

THE STANDING COMMITTEE ON
BANKING AND COMMERCE

The Honourable Salter Adrian Hayden, *Chairman*

The Honourable Senators

Aseltine	Gouin	Paterson
Baird	Hayden	Pearson
Beaubien (<i>Bedford</i>)	Higgins	Pouliot
Beaubien (<i>Provencher</i>)	Horner	Power
Bouffard	Howard	Pratt
*Brooks	Hugessen	Reid
Burchill	Irvine	Robertson
Campbell	Isnor	Roebuck
Choquette	Kinley	Smith (<i>Kamloops</i>)
Connolly (<i>Ottawa West</i>)	Lambert	Taylor (<i>Norfolk</i>)
Crerar	Leonard	Thorvaldson
Croll	*Macdonald (<i>Brantford</i>)	Turgeon
Davies	McCutcheon	Vaillancourt
Dessureault	McKeen	Vien
Drouin	McLean	Willis
Emerson	Melson	Woodrow—50.
Farris	Monette	
Gershaw	O'Leary (<i>Carleton</i>)	

(Quorum 9)

*Ex officio member.

ORDER OF REFERENCE

Extract from the Minutes of the Proceedings of the Senate, Thursday, November 28th, 1962:—

“Pursuant to the Order of the Day, the Honourable Senator Macdonald (*Cape Breton*) moved, seconded by the Honourable Senator Emerson, that the Bill C-49, intituled: An Act to amend An Act to amend the Combines Investigation Act and the Criminal Code, be read the second time.

After debate, and—

The question being put on the motion, it was—

Resolved in the affirmative, on division.

The Bill was then read the second time, on division.

The Honourable Senator Macdonald (*Cape Breton*) moved, seconded by the Honourable Senator Emerson, that the Bill be referred to the Standing Committee on Banking and Commerce.

The question being put on the motion, it was—

Resolved in the affirmative.”

J. F. MacNEILL,
Clerk of the Senate.

MINUTES OF PROCEEDINGS

THURSDAY, November 29th, 1962.

Pursuant to adjournment and notice the Standing Committee on Banking and Commerce met this day at 10.00 a.m.

Present: The Honourable Senators Hayden, *Chairman*; Aseltine, Brooks, Burchill, Croll, Drouin, Higgins, Hugessen, Irvine, Isnor, Kinley, Leonard, Macdonald (*Brantford*), McLean, Power, Reid, Roebuck, Smith (*Kamloops*), Turgeon, Vaillancourt, Willis and Woodrow—22.

In attendance: Mr. E. Russell Hopkins, Law Clerk and Parliamentary Counsel and the Official Reporters of the Senate.

Bill C-49, An Act to amend An Act to amend the Combines Investigation Act and the Criminal Code, was read and considered.

Mr. J. J. Quinlan, Deputy Director, Combines Investigation Act was heard in explanation of the Bill.

On motion of the Honourable Senator Roebuck, it was Resolved to report recommending that authority be granted for the printing of 800 copies in English and 200 copies in French of their proceedings on the said Bill.

After discussion, it was Resolved to report the said Bill without any amendment.

At 11.00 a.m. the Committee proceeded to the consideration of other bills.

Attest.

Gerard Lemire,
Clerk of the Committee.

REPORT OF THE COMMITTEE

THURSDAY, November 29th, 1962.

The Standing Committee on Banking and Commerce to whom was referred the Bill C-49, intituled: "An Act to amend An Act to amend the Combines Investigation Act and the Criminal Code", have in obedience to the order of reference of November 28th, 1962, examined the said Bill and now report the same without any amendment.

All which is respectfully submitted.

SALTER A. HAYDEN,

Chairman.

THE SENATE
STANDING COMMITTEE ON BANKING AND COMMERCE

EVIDENCE

OTTAWA, Thursday, November 29, 1962.

The Standing Committee on Banking and Commerce, to which was referred Bill C-49, an Act to amend an Act to amend the Combines Investigation Act and the Criminal Code, met this day at 10.15 a.m.

Senator Salter A. Hayden (*Chairman*), in the Chair.

On a motion duly moved and seconded it was agreed that a verbatim report be made of the committee's proceedings on the bill.

On a motion duly moved and seconded it was agreed that 800 copies in English and 200 copies in French of the committee's proceedings on the bill be printed.

The CHAIRMAN: The bill we have before us is Bill C-49, an Act to amend an Act to amend the Combines Investigation Act and the Criminal Code. Mr. Quinlan, of the Department of Justice, is here. Mr. Quinlan is Deputy Director under the Combines Investigation Act. Mr. Quinlan, what have you to say about this particular bill? This is the fourth time it has been before us, is it not?

Mr. J. J. Quinlan, Deputy Director of Investigation and Research (Combines Investigation Act): Mr. Chairman, I believe it is the fourth time that this bill is before the Senate.

The CHAIRMAN: Will you tell the committee just why this statutory immunity has lasted for so long?

Senator ASELTINE: And tell us something about those law suits that have been held up.

Mr. QUINLAN: The main reason for the re-introduction of the bill is that there has been litigation over the past three years. There have been some six or seven actions relating to the inquiry, taken in the courts of Ontario and British Columbia, which have just finally been disposed of by the Supreme Court of Canada. The inquiry was unable to proceed pending disposition of those cases.

Senator CROLL: For the record, will you tell us something about the history of this legislation, in order that the committee may get some benefit out of the discussion. Start at the beginning, put us in the picture, tell us about the law suits, tell us how they stand and what the prospect is of getting rid of his act. Then, with all that information, we will have the background of the situation.

The CHAIRMAN: Tell us how the law suits have interfered with the progress of the investigation.

Senator ROEBUCK: And now that they are disposed of why doesn't that allow us to do away with the act?

The CHAIRMAN: An investigation by the Combines Investigation Branch was held up pending disposition of the actions.

Senator ROEBUCK: Yes, but the actions have been disposed of.

The CHAIRMAN: Yes, but the purport of these actions was to withhold certain documents from the scrutiny of the department. Now they are free to get at them.

Mr. QUINLAN: I think what I might do is to put on record the statement made by the minister the first time this legislation was introduced.

Senator BURCHILL: On what date was that?

Mr. QUINLAN: July 7, 1959.

Senator BURCHILL: Is that the first time this legislation was introduced?

Mr. QUINLAN: Yes, it has been on a year-to-year basis.

I will read what the minister said. This is reported at page 5578 of the House of Commons *Hansard* July 7, 1959.

A statement of evidence has been submitted by the director under the combines act to the restrictive trade practices commission and to various fish packing companies, associations and individuals, alleging that certain agreements and activities relating to the supply of raw fish by the fishermen to the companies are illegal. As a result of the doubt thereby cast upon the legality of such agreements and activities the companies have declined to negotiate prices with the fishermen's union, as they have done in past years, and it appears that a strike may result which could lead to the loss of the salmon catch and perhaps other catches of fish.

There is a provision in the anti-combines legislation to the effect that nothing therein shall be construed to apply to combinations of workmen or employees for their own reasonable protection as such workmen or employees, and it will, I believe, be argued by the fishermen that they come within the protection of this provision. If, however, it should turn out, as a result of the inquiry, that the agreements dealt with therein are in whole or in part illegal, it may be that the report will disclose a situation with which we shall have to take steps to deal in a definitive manner, but it is not possible to do so now.

Meanwhile it is essential that all reasonable steps be taken to prevent the loss of the salmon and other catches, and I shall therefore propose a clause in the new bill to the effect that the anti-combines legislation shall not apply to arrangements between fishermen or associations of fishermen in British Columbia, and persons or associations of persons engaged in the buying or processing of fish in British Columbia, relating to the prices, remuneration or other conditions under which fish shall be caught and supplied, between the 1st day of January, 1959 and December 31, 1960. By the latter date it is hoped that the remaining steps in the inquiry will have been concluded and a report will have been made by the restrictive trade practices commission so that we may be able to assess what, if any, further action should be taken to dispose finally of the situation.

At that time one action had been started and it was expected that it would be finished by the end of 1960.

Senator CROLL: Started by whom?

Mr. QUINLAN: Some of the parties to the inquiry.

Senator CROLL: Fishermen?

Mr. QUINLAN: No, the companies.

Senator CROLL: Some companies started an action for what?

Mr. QUINLAN: Against the commission and the director. The Combines Act provides that the parties to an inquiry are entitled to a full opportunity to be heard before the commission after a statement of evidence is presented and before a report is made. Pursuant to that provision the commission proposed to make available certain documentary and oral evidence to the parties. The companies took objection to making available these documents to union officers, and that was the beginning of the action. They petitioned for an injunction. That action was taken in Ontario.

Senator CROLL: The action was taken in Ontario, why?

Mr. QUINLAN: On the basis that members of the commission were resident in Ontario; they were not in British Columbia at the time. The action was heard before Mr. Justice Danis of the Supreme Court of Ontario and during the course of the action he varied the interlocutory injunction holding that the commission could turn over the documents deemed advisable after a public hearing for this purpose.

Senator BROOKS: Were the companies opposed to this, and the fishermen in favour of it? Was that the situation?

Mr. QUINLAN: Yes.

The CHAIRMAN: Wait, now.

Mr. QUINLAN: The fishermen were asking for documents and the commission was proposing to turn certain documents over to the fishermen. Then Mr. Justice Danis altered this interlocutory injunction. There was an interim injunction prohibiting the turning over of any documents and during the course of the trial he altered the terms of the injunction permitting them to be turned over after a public hearing. The commission then went out west for a public hearing and at that time the actions in British Columbia were started against them; they were then within the jurisdiction of British Columbia courts.

Senator CROLL: Who started the actions?

Mr. QUINLAN: They were started by the companies.

Senator CROLL: Why actions?

Mr. QUINLAN: There were a series of actions by different companies and on different points.

Senator BROOKS: Were the companies opposed to this combines act?

Mr. QUINLAN: That did not enter into it, Senator Brooks.

Senator CROLL: What has happened to those actions?

Mr. QUINLAN: The British Columbia actions went to the Supreme Court of Canada, five of them, but they were all consolidated, and they related to the turning over of documents. The Supreme Court of Canada dealt with that this year. I will read an excerpt from their judgment.

Senator CROLL: No, just tell us about it in your own words.

Mr. QUINLAN: I was going to read an excerpt from their judgment to tell you what they did. It is very short.

The Supreme Court of Canada judgment declared that:

The Commission is required to furnish to each person against whom an allegation is made in the Statement of Evidence a copy of the evidence taken at the instance of the Director, only in so far as such evidence relates to the allegations made against such person and copies of only such of the documents taken from the possession of the appellant companies as are relevant to the allegations made against him.

On the basis of that decision the Ontario action was then disposed of. In that action the trial judge had held that documents could not be turned over. The Crown appealed that decision and the appeal was waiting to be heard, but it was held in abeyance while the British Columbia case was going to the Supreme Court. Eventually the Ontario action was disposed of, on consent, on the basis of the Supreme Court of Canada judgment. In the Ontario case Mr. Justice Danis died before he could deliver judgment, and they had to have a re-hearing. There also was one other action which related to the holding of a public hearing. That was dismissed by the British Columbia courts in the trial and appeal divisions, and leave was sought to appeal to the Supreme Court of Canada. That leave was refused on October 2nd or 3rd this year, and that finally disposed of all the actions that are pending. The next proceeding —

Senator ASELTINE: Is the deck clear now so that you can go ahead with your investigation?

Mr. QUINLAN: At the moment it is, provided there are no further actions. The commission is to decide which documents are to be made available to each party in the inquiry and they are then given time to prepare their argument before the commission, and the commission will then make its report.

As you may recall, the terms of two of the commissioners have expired, and the minister has announced that they were being retained as special assistants until the end of December, to complete the drug report, and that therefore he would not be making any appointments to the commission until after the end of December.

The CHAIRMAN: I understand that in the statement of evidence which is prepared after your first investigation has been completed there are allegations in relation to offences under the Combines Investigation Act, not only against the purchasers of fish, but against officers of the union?

Mr. QUINLAN: Yes.

Senator ROEBUCK: Why does that justify us in setting aside the provisions of the Combines Investigation Act and the Criminal Code, because these parties are contending one with the other? Why should not they still have to abide by the Code?

Mr. QUINLAN: The position that was taken was that this was necessary, in the first instance. It was an extraordinary situation, to avoid a strike in the industry.

Senator ROEBUCK: We could have abolished the Criminal Code very recently when certain railway employees were proposing to strike, and we could have given everybody a free hand to bump anybody off they liked.

Mr. QUINLAN: With a commodity like fish, once the catch is gone it is gone, and it cannot be taken care of next week or the week after.

Senator ROEBUCK: Why not give the men and the officials who are running the business a *carte blanche* forever? Why should this be limited to a year, and let them gyp the public and do what they like to their heart's content?

The CHAIRMAN: Let us assume the public hearing has taken place and the Restrictive Practices Commission then makes its report, and in the report it finds there have been violations of the Combines Investigation Act and the Criminal Code, in view of this bill any action under that would have to await their further violations in the future, because it appears to me we are giving them a statutory immunity.

Senator ROEBUCK: That is exactly what we are doing: we are giving them a statutory immunity from the provisions of the Criminal Code and also the Combines Investigation Act. As far as your taking action is concerned, it is in

your hands at all times. You could have withheld your decision and delayed matters as long as, I suppose, you cared to do so. Here you have not specified what sections of the Criminal Code are laid aside; it is the whole Code.

The CHAIRMAN: Section 411.

Mr. QUINLAN: Yes, it is section 411.

Senator ROEBUCK: That is undue restriction of competition.

The CHAIRMAN: Fixing prices.

Senator ROEBUCK: I do not think the fact that it is before the courts should influence us in the slightest degree. We can count on the courts to use good sense and administer justice, and why should we step in and say the standard acts for the protection of the public should be set aside?

Senator CROLL: Is it conceivable that when they start handing over the documents under the order of the Supreme Court of Canada someone will bring an action saying, "You are handing over the wrong documents"?

The CHAIRMAN: Or, "You have not handed over enough"?

Senator CROLL: We are stuck with this from now on. It is not bad business for them to continue those actions for the purpose of getting this immunity, and sort of moving along on that basis for years and years to come. They could conceivably hold up the proceedings a long time. After all, it is the cheapest way of doing it, going up to the Supreme Court of Canada again on some point which might be valid. I do not know whether it is, but it is going to go on and on and on.

Senator MACDONALD (*Brantford*): I rather doubt if that has been the purpose up to date. This has been going along in the usual manner in connection with an action of this kind. In the future, if we did suspect something was being done like the honourable Senator Croll suggests, we might step in, but I do not see any reason for suggesting anything of that type at the present time.

Senator CROLL: I do not see any reason for refusing to pass the bill, but I can foresee the witness coming back again next year, and I should like to see him here, but it is not his fault at all. May I pick your brains for just a moment? You are undoubtedly acquainted with the British act with respect to it?

Mr. QUINLAN: Yes.

Senator CROLL: I have in mind that in Britain, under the act, they have a board set up where they can come to them under these circumstances and be exempted from the general act.

The CHAIRMAN: The procedure there is if you have an agreement it does not automatically become illegal. You go to this board or commission, and if your evidence is persuasive enough this agreement is in the public interest you can go ahead. But if they say it is not, you are in for a lot of trouble.

Mr. QUINLAN: If the agreement is registrable it is deemed to be against the public interest, and it is up to you to prove it is not.

Senator KINLEY: It seems to me this is the only way they can do it. How else could they carry on?

The CHAIRMAN: I feel they could carry on. It might be adding to their miseries, but the point, as I understand it, is that the buyers of fish said, "If these contracts are being impugned we will not buy fish." That would leave the union of fishermen without a job and there would not be any harvesting of the fish. Apparently the Government is proceeding on the basis that there is a public interest in the harvesting of fish, until the question has been decided. And that is the paramount interest to several at the moment.

Senator KINLEY: Would it not be a good general law?

The CHAIRMAN: Senator, don't get me started on this because I would agree 100 per cent with you.

Senator KINLEY: I am thinking of the fishing on the Atlantic coast where deep-sea fishermen have a mutual interest in the product they fish. They share in the profit. Now, if the fishermen are partners, as they are, they should have something to say in the price. Down in Boston every morning they have an auction, and they auction the fish off from the pier to the highest bidder. The bidders come from all over.

Senator ROEBUCK: Why don't you ask that they set aside the criminal law as far as your people down there are concerned, and you can do as you like.

The CHAIRMAN: They have not been interfered with yet.

Senator ROEBUCK: They would be, and somebody down in Boston could say, if there is any chance of impugning the transaction because it is illegal and contrary to the provisions in Canada and, to protect the public, "We won't buy your fish."

Senator KINLEY: I am just saying that is where they do it.

Senator ROEBUCK: Somebody says what you are doing is illegal. Why don't you ask down there to set aside the general law of the land?

Senator KINLEY: I am just asking this committee whether it would not be a good general law.

The CHAIRMAN: Order, gentlemen.

Senator CROLL: May I ask one more question?

The CHAIRMAN: There is another explanation I want to give. You will notice this legislation had not started prior to 1959, and the first bill dealt with the period to December 31, 1960. As I understand it this inquiry into the activities of the buyers of fish and the fishermen's union goes back prior to 1959, and we are not providing any statutory immunity in relation to anything they did prior to 1959. All these succession of bills is doing is saying that during the period of inquiry we are not going to hang you on anything that was done in that period, but the real investigation, as I understand it, is into the circumstances and conditions prior to 1959, and there is no exemption on that at all.

Senator CROLL: May I ask one question?

Senator ROEBUCK: I don't see any reason for setting aside the period from 1959 on.

Senator CROLL: As a matter of information with respect to this exempting of registered contracts in Britain, I am interested in this. Have you a list of them, and can you tell us how many there are and how wide they are in industry?

Mr. QUINLAN: I am speaking from memory, but I believe the Registrar in his last report said that something over 2,000 agreements had been registered. When you have a decision on one, there are many similar and what is happening is that you may have one decision, and possibly two hundred organizations that have a similar type may withdraw the agreement.

Senator CROLL: Do you know what industries are covered?

Mr. QUINLAN: They cover a vast number of industries. There are over 2,000 agreements.

Senator CROLL: What is the basis for arriving at the public interest as against special interest?

Mr. QUINLAN: They have different gateways through which you can get, the final one being called the tailgate. If you get through the particular gateways you must prove it is in the public interest as well.

Senator BROOKS: Have we given that any study in our country?

Mr. QUINLAN: It is a civil procedure, and our legislation is criminal.

Senator ROEBUCK: What have they done or what are they doing that is criminal and contrary to the Criminal Code that they want us to make them immune from the results?

Mr. QUINLAN: There has been no decision at the moment. The statement of evidence has raised these questions, and as the Minister explained what we are now doing is granting them immunity for this period. It may be that the commission will find there has been no offence and in this event everything is disposed of. If it should be found that these do constitute infractions of the anti-combine legislation, the matter will have to be dealt with.

Senator KINLEY: Mr. Chairman, shouldn't somebody be here from the Department of Fisheries? Shouldn't we hear from them on a bill of this kind?

The CHAIRMAN: It would appear that the plan or scheme of this bill is to make sure that the harvesting of fish on the west coast continues.

Senator KINLEY: I am all for the bill. I think it is right, but why is such legislation necessary?

The CHAIRMAN: Because of the state of our law, if we are going to do anything to permit the harvesting of fish, we have to do it in this way. I would like to see the English law myself. But we have no alternative.

Senator LEONARD: Unless we are going to create chaos.

Senator ROEBUCK: May I ask this question; there are quite a number of parties engaged in the purchase of fish, so that there is competition among both the buyers and sellers. Now is there any contest between any of these parties? Is there one party putting the other out of business?

Mr. QUINLAN: I would rather stay away from the merits at this moment if I could. The matter is going before the commission, and if I could avoid it I wouldn't like to say anything regarding the merits for the moment.

The CHAIRMAN: As I understand it, the statement is not yet a public document.

I have a motion to report the bill without amendment.

Senator ROEBUCK: On division.

Motion agreed to, on division.

The committee thereupon concluded its consideration of Bill C-49.

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